

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT  
OF COMMERCE, et al.,

Defendants.

18-CV-2921 (JMF)

NEW YORK IMMIGRATION  
COALITION, et. al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE, et. al.,

Defendants.

18-CV-5025 (JMF) (Consolidated Case)

**NOTICE OF FILING OF DEPOSITION DESIGNATIONS FOR JOHN GORE**

Plaintiffs hereby file with the Court the synopsis of deposition excerpts for John Gore (Exhibit 1), and the deposition excerpts for John Gore that will be offered as substantive evidence (Exhibit 2).

Respectfully submitted,

By: /s/ Dale Ho

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Summary: John Gore Deposition (October 26, 2018)

Prior to 9/8/17, Commerce initiated conversations with DOJ, including a conversation between Secretary Ross and Attorney General Sessions, regarding a citizenship question on the Census. Tr. 58-68, 83-84, 112. As of 9/8/17, DOJ staff did not want to raise the issue of the citizenship question. Tr. 68-69. Gore first became involved around Labor Day 2017, through Mary Blanche Hankey and AG Sessions. Tr. 73-75. Gore then spoke with various Commerce officials. Tr. 91-95. In September, Gore facilitated a Ross-Sessions conversation. Tr. 95-112.

Gore wrote the first draft of the DOJ Letter requesting a citizenship question. Tr. 127. The only career Civil Rights Division staff to provide input was Voting Section Chief Chris Herren, who provided edits to the initial draft around 11/1/17. Over the next month, Gore received edits from junior political appointees on his staff, and Sessions advisors Rachael Tucker and Robert Troester; none had experience in VRA cases or in assessing the reliability of CVAP data. Tr. 133-42. Final authorization came from AG Sessions. Tr. 158-60.

The DOJ Letter states that American Community Survey (ACS) CVAP data is not ideal for VRA enforcement because it is a separate data set from the decennial census; does not align in time with the census; are statistical estimates with error margins; and require the use of an estimation technique to arrive at block-level data. But for as long as DOJ has enforced the VRA, it has relied on statistical estimates of CVAP with error margins, Tr. 174-76, 201-03; has never had a single data set with both total population and CVAP, Tr. 182-88; and has always relied on estimation procedures for block-level CVAP data, Tr. 234-36. Gore is not aware of any Section 2 cases that were unsuccessful for these reasons. Tr. 190-91, 194-95, 203-04, 236-40. Gore gave contradictory answers about whether he expected block-level CVAP data to reflect answers to the citizenship question. Tr. 213-23. Gore wasn't familiar with disclosure avoidance techniques used by the Census Bureau to preserve confidentiality, and didn't know whether CVAP data derived from the Census questionnaire would be more precise than the CVAP data DOJ currently uses. Tr. 223-34. Gore is not aware of a case where a VRA claim failed due to reliance on 5-year ACS estimates, which the Census Bureau considers reliable for any geographic area. Tr. 242-47. The Trump Administration has not filed any Section 2 cases. Tr. 249-51.

On December 22, 2017, Acting Census Director Ron Jarmin emailed Arthur Gary at DOJ, stating that Census Bureau staff found that they could produce higher quality CVAP data at lower cost without adding a citizenship question to the Census; Gary forwarded the email to Gore. Tr. 254-61. On 1/9/18, Gary and Jarmin scheduled a meeting for 1/19/17. Tr. 262. Prior to 1/16/17, Gore and Gary had conversations about the Bureau's proposal. Tr. 262-64. Gore discussed the issue in-person with AG Sessions, who made the decision not to have the meeting with the Census Bureau. Tr. 265-72. Gore informed Gary of the decision. Tr. 273-74. On 1/16, Gary canceled the meeting. Tr. 262. While testifying in Congress in May, Gore stated that DOJ's goal was to get the most accurate CVAP data possible, but did not mention the Bureau's proposal for higher-quality CVAP data, or DOJ's refusal to meet to discuss it. Tr. 278-84. Gore claimed he did not know the Census Bureau's views as to the most accurate data, and refused to answer whether he wanted to have a meeting to learn about the Bureau's views. Tr. 284-88. Gore agreed that a citizenship question is not necessary for DOJ's VRA enforcement. Tr. 299-300.

A 4/6/18 briefing memo for AG Sessions states that, in 2017, Secretary Ross requested that DOJ send a letter requesting the citizenship question, and specifically notes that this information is "NOT PUBLIC." Tr. 331-33. Gore acknowledged a conversation with AG Sessions about using a metric other than total population for apportionment purposes. Tr. 338. AG Sessions made the decision to request the citizenship question. Tr. 442.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK IMMIGRATION :  
COALITION, et al., :  
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Plaintiffs, :  
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v. : Case No.  
:  
1:18-CF-05025-JMF  
UNITED STATES DEPARTMENT :  
OF COMMERCE, et al., :  
:  
Defendants. :

- - - - -x  
Friday, October 16, 2018  
Washington, D.C.

Videotaped Deposition of:

JOHN GORE,  
called for oral examination by counsel for the  
Plaintiffs, pursuant to notice, at the law offices of  
Covington & Burling, LLP, One City Center, 850 Tenth  
Street, Northwest, Washington, D.C. 20001-4956,  
before Christina S. Hotsko, RPR, CRR, of Veritext  
Legal Solutions, a Notary Public in and for the  
District of Columbia, beginning at 9:05 a.m., when  
were present on behalf of the respective parties:

REDACTED

A P P E A R A N C E S

On behalf of New York Immigration Coalition:

DALE HO, ESQUIRE

JONATHAN TOPAZ, ESQUIRE

American Civil Liberties Union Foundation

REDACTED

On behalf of Lupe Plaintiffs:

DENISE HULETT, ESQUIRE

MALDEF

REDACTED

ERI ANDRIOLA, ESQUIRE

Asian Americans Advancing Justice

REDACTED

On behalf of City of San Jose and Black Alliance for  
Just Immigration:

JON M. GREENBAUM, ESQUIRE

DORIAN L. SPENCE, ESQUIRE

Lawyers Committee for Civil Rights Under Law

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California Department of Justice  
Office of the Attorney General

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U.S. Department of Justice, Civil Division

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ANDREW SAINDOM, ESQUIRE  
Office of the Attorney General for D.C.

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A P P E A R A N C E S C O N T I N U E D

On behalf of Defendants:

DAVID DOREY, ESQUIRE

DAVID DEWHIRST, ESQUIRE

REDACTED

Also Present:

Dan Reidy, Video Technician

Veritext Legal Solutions

Mid-Atlantic Region

1250 Eye Street NW - Suite 350

Washington, D.C. 20005

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## C O N T E N T S

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18 May 2018

\* (Exhibits attached to transcript.)

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1 P R O C E E D I N G S

2 VIDEO TECHNICIAN: Good morning. We are  
3 going on the record at 9:05 a.m. on Friday,  
4 October 26th, 2018.

5 Please note that the microphones are  
6 sensitive and may pick up whispering, private  
7 conversations, and cellular interference. Please  
8 turn off all cell phones or place them away from  
9 the microphones, as they can interfere with the  
10 deposition audio.

11 Audio and video recording will continue  
12 to take place unless all parties agree to go off  
13 the record.

14 This is media unit 1 of the  
15 video-recorded deposition of John Gore, taken by  
16 counsel for the plaintiff in the matter of the  
17 New York Immigration Coalition, et al. versus the  
18 United States Department of Commerce, et al.

19 This case is filed in the United States  
20 District Court for the Southern District of New  
21 York.

22 This deposition is being held at the law

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1 offices of Covington & Burling, LLP, located at  
2 850 Tenth Street, Northwest, Washington, D.C.  
3 20001.

4 My name is Dan Reidy from the firm  
5 Veritext Legal Solutions, and I'm the  
6 videographer. The court reporter is Christina  
7 Hotsko from the firm Veritext Legal Solutions.

8 I am not authorized to administer an  
9 oath, I am not related to any party in this  
10 action, nor am I financially interested in the  
11 outcome.

12 Counsel and all present in the room will  
13 now state their appearances and affiliations for  
14 the record. If there are any objections to  
15 proceeding, please state them at the time of your  
16 appearance, beginning with the noticing attorney.

17 MR. HO: Detail Ho for the New York  
18 Immigration Coalition plaintiffs.

19 MR. TOPAZ: Jonathan Topaz for NYC  
20 plaintiffs.

21 MS. HULETT: Denise Hulett for Lupe  
22 plaintiffs.

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1 MR. SPENCE: Dorian Spence for BAJI and  
2 the City of San Jose.

3 MS. ANDRIOLA: Eri Andriola for the Lupe  
4 plaintiffs.

5 MR. GREENBAUM: John Greenbaum from the  
6 City of San Jose and BAJI.

7 MS. THOMAS: Tina Thomas for the Kravitz  
8 plaintiffs.

9 MS. KOPPLIN: Rebecca Kopplin from the  
10 Department of Justice.

11 MS. LACOUR: Alice Lacour from the  
12 Department of Justice.

13 MR. SHUMATE: Brett Shumate from the  
14 Department of Justice.

15 MR. GARDNER: Josh Gardner for the  
16 Department of Justice on behalf of the defendants.

17 MR. SAINDOM: Andrew Saindom on behalf of  
18 the District of Columbia.

19 MS. NANNERY: And Valerie Nannery from  
20 the District of Columbia attorney general's  
21 office.

22 MR. DOREY: David Dorey from the

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1 Department of Commerce.

2 MR. DEWHIRST: David Dewhirst from the  
3 Department of Commerce.

4 VIDEO TECHNICIAN: Will the court  
5 reporter please swear in the witness.

6 Whereupon,

Global Objection  
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7 JOHN GORE,

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Q. Before you began working at DOJ, you were  
an attorney in private practice, correct?

A. Yes.

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1 Q. And as an attorney in private practice,  
2 you litigated some cases involving claims under  
3 Section 2 of the Voting Rights Act, correct?

4 A. Yes.

5 Q. You're familiar with the term citizen  
6 voting age population, the acronym C-V-A-P, or  
7 what I'll refer to as CVAP today?

8 A. Yes.

9 Q. And you're familiar with the term ACS for  
10 American Community Survey?

11 A. I am.

12 Q. You're familiar with the first  
13 precondition for Section 2 liability under  
14 Thornburg versus Gingles?

15 A. Yes.

16 Q. And one way of describing the first  
17 Gingles precondition for Section 2 liability under  
18 the Voting Rights Act is that plaintiffs must  
19 demonstrate that racial minorities are  
20 sufficiently numerous so as to form a majority of  
21 a compact single-member district. Is that your  
22 understanding?

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1 A. That's -- more or less. Yeah.

2 Q. Prior to coming to the Department of  
3 Justice, with respect to all of the cases that you  
4 litigated under Section 2 of the Voting Rights  
5 Act, you represented defendants, correct?

6 A. That's correct.

7 Q. In all of your experience representing  
8 defendants in cases under Section 2 of the Voting  
9 Rights Act, you never took the position that the  
10 plaintiffs block-level CVAP data was insufficient  
11 to establish the first Gingles precondition  
12 because it was a statistical estimate, correct?

13 A. When I was in private practice, I was  
14 representing a client, so my clients took various  
15 positions. And as a lawyer, I pursued those  
16 positions on behalf of clients in court. I can't  
17 recall an instance where a client of mine took  
18 that position.

19 Q. And in all of your experience litigating  
20 cases under Section 2 of the Voting Rights Act,  
21 you're not aware of, in any of your cases, a  
22 situation where a court held that block-level CVAP

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1 data was insufficient to satisfy the first Gingles  
2 precondition because it was a statistical  
3 estimate, correct?

4 A. You're talking about cases I actually was  
5 involved in?

6 Q. That's correct.

7 A. As a litigant or as attorney?

8 Q. As an attorney.

9 A. As an attorney. No, I'm not aware of any  
10 such case.

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21 Q. So let me clarify my question. My

22 question is about the technical aspects of

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1 actually getting the census data, taking the  
2 mapping software, and drawing a district.

3 You don't have any experience doing that,  
4 correct?

5 A. That's correct. I've never sat in front  
6 of a computer with Maptitude and drawn a district.

7 Q. Okay. You don't have any experience --  
8 so that would mean you don't have any experience  
9 drawing districts using ACS data, correct?

10 A. That's correct.

11 Q. And you don't have any experience taking  
12 census block-group level data and performing an  
13 estimation procedure to produce block-level data,  
14 correct?

15 A. No, I don't have that experience.

16 Q. You're currently acting assistant  
17 attorney general for civil rights at the U.S.  
18 Department of Justice, correct?

19 A. Correct.

20 Q. And when did you become the acting AAG  
21 for civil rights?

22 A. July 28th, 2018.

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1 Q. In that position, you are the head of the  
2 civil rights division, correct?

3 A. Correct.

4 Q. And you're a political appointee; you're  
5 not career civil rights division staff, correct?

6 A. Correct.

7 Q. One of the sections under your purview  
8 within the civil rights division is the voting  
9 section, correct?

10 A. Correct.

11 Q. And one of the duties of the voting  
12 section is to enforce Section 2 of the federal  
13 Voting Rights Act of 1965, correct?

14 A. That's correct.

15 Q. Is it fair to say that, as acting AAG for  
16 civil rights, you are authorized to speak on  
17 behalf of the civil rights division?

18 A. I think with respect to matters that fall  
19 within the purview of the civil rights division  
20 and the Office of the Assistant Attorney General  
21 for the civil rights division, that's correct, as  
22 a general matter.

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Q. The Department of Justice sent a letter to the Census Bureau on December 12th, 2017, requesting that a citizenship question be included on the 2020 decennial census questionnaire, correct?

A. I have no basis to dispute the date

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1 there. Yes, the department did send a letter.  
2 Whether it was December 12th -- I believe that's  
3 correct, but I don't have the letter in front of  
4 me, so I can't testify to that date necessarily.  
5 But yes, there was a letter that was sent in that  
6 time frame from the Department of Justice to the  
7 Census Bureau.

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2 Q. The letter does not express any reason  
3 for requesting a citizenship question be added to  
4 the 2020 decennial census questionnaire besides  
5 Voting Rights Act enforcement, correct?

6 A. Again, I think the letter speaks for  
7 itself. And I don't have a copy of it in front of  
8 me, so I can't say what it does or doesn't say.

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Q. You agree that the department is seeking the most complete and accurate data regarding total citizenship rates in voting districts that the Census Bureau can provide, correct?

A. Yes, that's correct.

Q. And do you believe that the letter from the Department of Justice to the Census Bureau requesting the inclusion of a citizenship question is consistent with the department's goal of seeking the most complete and accurate data regarding total citizenship rates that the Census Bureau can provide?

A. I think it's consistent with that objective, but is not the full picture of the data that the Department of Justice would use and would want to have at its disposal.

Q. When you say that it is not the full picture of the data that the Department of Justice would use and want to have, what did you mean by that?

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1           A. Well, what I mean is there are various  
2 sources of data on citizenship. And in the modern  
3 world, we live in a data-driven world. And the  
4 Department of Justice is always trying to find the  
5 best possible data, whether it's from one source  
6 or multiple sources, to analyze jurisdictions for  
7 potential Section 2 violations and to bring  
8 appropriate Section 2 enforcement actions.

9           And the letter lays out reasons why -- is  
10 my recollection -- reasons why collecting data  
11 from the census questionnaire, in addition to  
12 other sources, would be an appropriate means for  
13 the Department of Justice to collect the best  
14 possible total data that it could collect.

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1 Q. Okay. Decennial census questionnaire,  
2 American Community Survey. Besides those two  
3 sources, are there other sources of citizenship  
4 data that you're aware of that the Department of  
5 Justice could rely on for purposes of Section 2  
6 enforcement?

7 A. Not that I'm aware of.

8 Q. You agree that having the most complete  
9 and accurate data regarding citizenship rates that  
10 the Census Bureau could provide would allow the  
11 department to fulfill its commitment to robustly  
12 enforcing the Voting Rights Act?

13 A. Yes, I do.

14 Q. I want to show you another document.  
15 It's been pre-marked as Exhibit 2.

16 (Gore Deposition Exhibit 2 marked for  
17 identification and attached to the  
18 transcript.)

19 BY MR. HO:

20 Q. This is a Bloomberg transcript of your  
21 testimony on May 21, 2018, before the House  
22 Oversight Committee.

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1 Do you remember your testimony that day?

2 A. I do.

3 Q. You were under oath that day under  
4 penalty of perjury, correct?

5 A. I was.

6 Q. And you testified truthfully that day,  
7 correct?

8 A. I did.

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18 You wanted to make sure that your  
19 testimony on May 21st was accurate, right?

20 A. Yes.

21 Q. And you wanted to make sure that -- to  
22 the extent you could discuss the issues that were

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1 raised that day, you wanted to make sure that your  
2 testimony was complete, right?

3 A. Yes, to the extent I was able to testify  
4 about matters consistent with Department of  
5 Justice policy and privileges.

6 Q. And you didn't want to leave anything  
7 important out of your testimony on May 21st,  
8 correct?

9 MR. GARDNER: Objection. Form.

10 THE WITNESS: I think that's largely  
11 correct, although again, there were strict limits  
12 on the testimony that I could give, the topics  
13 that I was authorized to discuss, and how I could  
14 go about answering questions.

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20 Q. And you held a moot to prepare for your  
21 testimony on May 21st, right?

22 A. That sounds right.

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5 Q. You're not aware of any voting section  
6 staff being invited to participate in your moot to  
7 prepare for the May 21st hearing, correct?

8 A. To the -- I think that's correct.

9 Q. And no career voting section staff  
10 attended your moot on -- to prepare for the May  
11 21st hearing, correct?

12 A. That's correct, although voting section  
13 staff did help me prepare for the hearing.

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2 It's still your view that the Department  
3 of Justice needs citizen voting age population  
4 data at the census block level to enforce  
5 Section 2 of the Voting Rights Act, correct?

6 A. Yes, in some form or another. The  
7 citizenship data at the block level is necessary  
8 to bring Section 2 cases.

9 Q. And the census block is the smallest unit  
10 of census geography, right?

11 A. That is correct.

12 Q. The next sentence of your testimony  
13 reads, "And our letter explains why hard count  
14 census data would be better suited for that  
15 purpose than the ACS. It's easier to use because  
16 it's already available at the block level and more  
17 accurate because it's hard count and not a" -- and  
18 then you were interrupted.

19 When you say hard count census data,  
20 you're drawing a distinction between an actual  
21 count, like the decennial census enumeration, and  
22 statistical estimates based on a sample survey

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1 like the ACS, correct?

2 A. That's correct.

3 Q. Okay. And your testimony is that hard  
4 count data is preferable to available statistical  
5 estimates, like the ACS, for purposes of VRA  
6 enforcement, correct?

7 A. Yes. And I think what I was testifying  
8 to here is what's in the letter, which again, is  
9 not in front of me. But my recollection of the  
10 letter is that it laid out reasons why that hard  
11 count data would be more appropriate than an ACS  
12 estimate for that purpose.

13 Q. How about -- turn to page 27 of the  
14 transcript. In the first full paragraph on page  
15 27, you testified, "And having more -- having it  
16 on the census would make it easier for us to use  
17 and it would also make it more accurate, or at  
18 least that's the judgment of the Census Bureau."

19 When you referred to the judgment of the  
20 Census Bureau, what were you referring to?

21 A. I think I was referring to two things.  
22 First of all, I was -- I only know anything about

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1 the judgment of the Census Bureau from publicly  
2 available information. Secretary Ross issued a  
3 memo of decision with respect to the letter that  
4 the Department of Justice submitted in which he  
5 decided, among other things, to order  
6 reinstatement of the citizenship question on the  
7 census questionnaire.

8 I also had watched at least portions of  
9 the May 8th hearing before the committee that you  
10 referenced earlier, and understood from testimony  
11 at that hearing that that was the position of the  
12 Census Bureau.

13 Q. So when you say the judgment of the  
14 Census Bureau, whose judgment, if you could  
15 identify individuals, are you referring to?

16 A. Secretary Ross would be one. And the  
17 other would be -- I can't remember who it was who  
18 testified at the hearing, but it was whoever  
19 testified at the hearing about the accuracy of a  
20 hard count versus an estimate. It may have been  
21 Ron Jarmin or somebody else. I just can't  
22 remember.

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Q. And when you say Ron Jarmin, you're referring to the acting director of the Census Bureau?

A. That's who I understand he is. I've never met him.

Q. When you testified that it was the judgment of the Census Bureau that CVAP data collected through the decennial enumeration would be more accurate, what did you mean by more accurate?

A. As I understand the judgment of the Census Bureau, it's that the hard count would be more accurate than an ACS estimate because an ACS estimate has a margin of error associated with it and also requires an extrapolation because, as you're no doubt aware, the ACS estimates are only released at the block group level, and so further extrapolation is required to estimate CVAP levels at the block level.

And it was my understanding, from

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Secretary Ross' memo and the testimony that I believe I heard on May 8th, that the Census Bureau believed that a hard count would be more accurate than estimates of an extrapolation with an associated margin of error.

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Q. Now, all things being equal, the Department of Justice would want to use the CVAP data that was, in the Census Bureau's view, the more accurate data available, correct?

A. I think that's probably correct. I guess I could imagine a scenario, which I don't know is present here or not, where we would make a different judgment as to what was more accurate than the Census Bureau might. But that's correct.

Q. When you say we would make a different judgment as to what is more accurate than the Census Bureau might, who's we?

A. The Department of Justice.

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16 Q. Do you think you're better situated than  
17 career Census Bureau professionals to make an  
18 assessment as to the accuracy of various forms of  
19 CVAP data?

20 A. Me personally?

21 MR. GARDNER: Objection to form.

22 THE WITNESS: Me personally?

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1 BY MR. HO:

2 Q. Yes.

3 A. No, I don't.

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Q. One more question about your testimony for now. On page 27, the last question on the page from Representative Gowdy: "So if Secretary Ross wanted to include a question, what's your favorite movie, how would a court determine whether or not that was an appropriate question? I mean, I guess what I'm getting at is, what is the standard by which you judge the legitimacy of the inclusion or exclusion of a question on the census form?"

Your response: "I think that is a very good question. It's probably better directed to the commerce department. I'm not involved in the litigation. That's being handled out" -- and then you got cut off.

What do you mean when you testified on May 21st that you're not involved in the litigation over the citizenship question?

A. I am not a counsel of record in that

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1 case. I have not been involved in litigating that  
2 case on behalf of the United States. I have not  
3 written any of the briefs, filed any of the  
4 pleadings, or done anything like that. I am a  
5 witness in the case, obviously here -- sitting  
6 here today, and was involved in the decision that  
7 was made by the Department of Justice.

8 But under Department of Justice  
9 regulations, this is defensive litigation that's  
10 being handled by the civil division, and the  
11 counsel of record is in the civil division, not  
12 the civil rights division.

13 Q. When you say that you're not counsel of  
14 record, are you counsel in some other capacity in  
15 this litigation?

16 MR. GARDNER: Objection. Vague.

17 THE WITNESS: No.

18 BY MR. HO:

19 Q. And you're not a party in this case,  
20 right?

21 A. No.

22 Q. And neither the civil rights division nor

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1 the Department of Justice itself is a party in  
2 this case, correct?

3 A. That's my understanding. I believe the  
4 case was brought against the Department of  
5 Commerce, but I've not studied the pleadings  
6 closely enough to know whether or not the  
7 Department of Justice is a party, but I believe  
8 it's not.

9 Q. And you wouldn't describe yourself as a  
10 consultant giving legal advice to counsel of  
11 record in this case, would you?

12 A. No.

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1 Q. I want to show you a document which we'll  
2 mark as Exhibit 3.

3 (Gore Deposition Exhibit 3 marked for  
4 identification and attached to the  
5 transcript.)

6 BY MR. HO:

7 Q. This bears the Bates number 000311. It's  
8 a letter dated November 4th, 2016, from Arthur  
9 Gary to then Census Bureau Director John Thompson.

10 We discussed Mr. Gary before. You sent  
11 him those talking points in December of 2017,  
12 right?

13 A. I did. Yes.

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2 Q. In his first sentence, Mr. Gary writes to  
3 Mr. Thompson, "This letter supplements my letter  
4 of July 1st, 2016, in which I advised that, at  
5 that time, the Department of Justice had no needs  
6 to amend the current content or uses or to request  
7 new content in the American Community Survey (ACS)  
8 for the 2020 census."

9 Did I read that right?

10 A. Yes.

11 Q. On July 1, 2016, DOJ sent a letter to the  
12 Census Bureau indicating that it had no need to  
13 amend the current content or to request new  
14 content in the ACS for the 2020 census, correct?

15 MR. GARDNER: Objection. Lack of  
16 foundation.

17 THE WITNESS: I have no basis to answer  
18 that question. I wasn't employed at the  
19 department on July 1, 2016. And I don't believe  
20 I've ever seen a July 1, 2016, letter from the  
21 department to the Census Bureau.

22 That's certainly what that sentence says,

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1 but I can't verify or testify to that. I have no  
2 firsthand knowledge on that topic.

3 BY MR. HO:

4 Q. You're not aware of the Department of  
5 Justice, on July 1st, 2016, requesting new content  
6 for the American Community Survey or the 2020  
7 decennial census, are you, Mr. Gore?

8 MR. GARDNER: Objection. Lack of  
9 foundation.

10 THE WITNESS: I don't believe I am, no.

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19 Q. Sure. This November 4th, 2016, letter  
20 formally requested that the Census Bureau include  
21 a topic on the ACS relating to LGBT populations,  
22 correct?

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1 MR. GARDNER: Objection. Lack of  
2 foundation.

3 THE WITNESS: It appears to. Yeah.

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Q. Okay. But the face of this letter does  
not make requests for any additional information  
on either the ACS or the 2020 census questionnaire

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1 other than a request about LGBT populations for  
2 the ACS, correct?

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3 MR. GARDNER: Objection. Lack of  
4 foundation.

5 THE WITNESS: That appears to be correct  
6 on the face of the letter.

7 BY MR. HO:

8 Q. This letter does not make any mention of  
9 a request for citizenship data, correct?

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10 MR. GARDNER: Same objection.

11 THE WITNESS: It does not on its face.

12 BY MR. HO:

13 Q. This letter does not make any request for  
14 the inclusion of a citizenship question on the  
15 census questionnaire, correct?

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16 MR. GARDNER: Same objection.

17 THE WITNESS: It does not appear to.

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Q. Are you aware of any changes in law since

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1 November 4th, 2016, with respect to the data that  
2 plaintiffs can rely on to establish the first  
3 Gingles precondition for Section 2 liability under  
4 the Voting Rights Act?

5 A. I'm not aware of any changes in law on  
6 that point, I don't believe.

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1 Q. Are you aware of any changes to the forms  
2 of citizenship data available to plaintiffs  
3 bringing Voting Rights Act claims in order to  
4 satisfy the first Gingles precondition?

5 A. I'm not aware of any changes in the forms  
6 of data. I guess what I'm struggling with on your  
7 question is I don't think that that forecloses a  
8 request to reinstate the citizenship question on  
9 the census questionnaire.

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11 A. So what the department is looking for is  
12 the most complete and accurate data it can  
13 possibly have to perform its function, and this is  
14 one more source of data that would allow the  
15 Department of Justice to carry out its enforcement  
16 mission.

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Q. Are you aware of any changes in the social sciences about the assessment in that community of the accuracy of citizenship estimates based on ACS data since November 4th, 2016?

MR. GARDNER: Objection. Form.

THE WITNESS: Which community?

BY MR. HO:

Q. The social scientific community.

A. Okay.

MR. GARDNER: Same objection.

THE WITNESS: I'm not aware of any

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1 changes. I am aware that there are questions that  
2 have been raised in the social science community  
3 about the accuracy of the estimates and  
4 extrapolations that are derived from the ACS data.

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Q. I'm going to show you a document,  
Exhibit 4. This is a memo data November --  
September 8th, 2017, from Earl Comstock to  
Commerce Secretary Wilbur Ross. It's in the  
administrative record in this case. Although this  
printout doesn't bear the number, I believe it is  
AR12756.

Do you know Mr. Comstock?

A. No, I don't, actually.

Q. The first paragraph of Mr. Comstock's  
memo reads, "In early May, Eric Branstad put me in  
touch with Mary Blanche Hankey as the White House  
liaison in the Department of Justice. Mary  
Blanche worked for AG Sessions in his senate

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1 office and came with him to the Department of  
2 Justice. We met in person to discuss the  
3 citizenship question. She said she would locate  
4 someone at the department who could address the  
5 issue. A few days later, she directed me to James  
6 McHenry in the Department of Justice."

7 Now, before I read that, were you aware  
8 that sometime prior to September 8th, 2017,  
9 officials from the Department of Commerce had  
10 spoken with officials within the Department of  
11 Justice regarding the issue of a citizenship  
12 question on the census?

13 A. Yes.

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17 Q. The conversations that occurred that are  
18 referenced in this paragraph that happened between  
19 Commerce and Justice officials before  
20 September 8th, 2017 --

21 A. Yes.

22 Q. -- you were aware of those conversations

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1 prior to the date when the Department of Justice's  
2 letter went to the Census Bureau to request a  
3 citizenship question in December of 2017, correct?

4 A. Yes.

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20 Q. When you say that you were aware that two  
21 or more people had talked to each other, which  
22 people were you aware had talked to each other?

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1           A.   It was my understanding that somebody  
2           from Commerce had spoken to Mary Blanche Hankey,  
3           that someone had spoken to James McHenry, and that  
4           Secretary Ross had spoken to the attorney general.

5           Q.   And that all of those conversations were  
6           about the inclusion of a citizenship question on  
7           the census?

8           A.   I wasn't a party to those conversations,  
9           but my understanding is that they would have  
10          touched on that issue.

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3 Q. During this period, Mr. McHenry was not  
4 staff in the civil rights division, correct?

5 A. That's correct.

6 Q. And Mr. McHenry did not have any formal  
7 duties with respect to enforcement of the Voting  
8 Rights Act during this period, correct?

9 A. He had no formal duties. As I recall, he  
10 was for some period of time our point of contact  
11 in the Office of the Associate Attorney General,  
12 which is why I remember he was there. But he did  
13 not have formal duties with respect to  
14 enforcement.

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Q. So you don't know of any reasons why

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Mr. McHenry could address the issue of including a

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citizenship question on the census?

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MR. GARDNER: Same objection.

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THE WITNESS: I -- I don't know one way

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or the other.

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Q. What was your understanding of who initiated those conversations?

A. My understanding was that those conversations were initiated by the Department of Commerce.

Q. Those initial conversations that are referred to in this memo, your testimony is that, to the best of your knowledge, those conversations were not initiated by the Department of Justice, correct?

A. Again, I wasn't a party to those conversations, but that's been my working understanding.

Q. And your working understanding is that the Department of Justice did not reach out to the Department of Commerce to initiate those conversations for the purposes of obtaining better data to enforce the Voting Rights Act, correct?

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1 MR. GARDNER: Objection. Lack of  
2 foundation.

3 THE WITNESS: Again, I wasn't a party to  
4 those conversations, but that's been my working  
5 understanding.

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7 Q. The second paragraph in this memo reads,  
8 "I spoke several times with James McHenry by phone  
9 and, after considering the matter further, James  
10 said that Justice staff did not want to raise the  
11 question, given the difficulties Justice was  
12 encountering in the press at the time, the whole  
13 Comey matter. James directed me to Gene Hamilton  
14 at the Department of Homeland Security."

15 So were you aware, before I read that,  
16 that as of September 8th, 2017, Justice staff did  
17 not want to raise the citizenship question?

18 MR. GARDNER: Objection. Lack of  
19 foundation.

20 THE WITNESS: Before you read that, yes,  
21 I was aware of that.

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So your understanding is that, as of September 8th, 2017, Justice staff did not want to raise the citizenship question, correct?

A. Yes, that's my understanding, although it wasn't my understanding on September 8th; it was an understanding that I acquired later.

Q. When did you acquire the understanding that, as of September 8th, Justice staff did not want to raise the issue of a citizenship question?

A. Again, I think it was along the same timeline that I learned that these conversations had taken place, the conversations referenced in the first paragraph and the second paragraph involving Mr. McHenry. And I believe I became aware of those sometime after September 8th and before the letter was sent from the Department of Justice.

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2 Q. When did you first become involved in  
3 deliberations about whether or not to request a  
4 citizenship question on the decennial census  
5 questionnaire?

6 A. I first became involved in either late  
7 August or early September of 2017.

8 Q. You can't get more precise than late  
9 August or early September?

10 A. Well, I think it was either a day or two  
11 before Labor Day in 20 -- the Labor Day weekend in  
12 2017 which I think that year may have fallen in  
13 late August.

14 Q. So as of September 8th, 2017, the date of  
15 Mr. Comstock's memo, your best recollection is  
16 that, as of that date, you were already involved  
17 in deliberations over whether or not to include a  
18 -- to request a citizenship question for the 2020  
19 census questionnaire?

20 A. That is correct. And I don't know --  
21 Mr. Comstock's memo is dated September 8th. He  
22 doesn't give any dates for any of these

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1 conversations, so I don't know if this memo was  
2 contemporaneous to conversations or related back  
3 to prior conversations he'd had.

4 But yes, that's my recollection, that, as  
5 of September 8th, I would have been involved in  
6 those deliberations.

7 Q. How did you become involved in  
8 deliberations over whether or not to request the a  
9 citizenship question be included on the  
10 2020 census questionnaire?

11 MR. GARDNER: Objection.

12 To the extent that that answer would  
13 cause you to reveal information subject to  
14 deliberative process privilege, I instruct you not  
15 to answer. To the extent you can answer that  
16 question without divulging such information, you  
17 may do so.

18 THE WITNESS: I became involved through a  
19 conversation I had with two individuals at the  
20 Department of Justice.

21 BY MR. HO:

22 Q. Which two individuals at the Department

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1 of Justice?

2 A. The attorney general and Mary Blanche  
3 Hankey.

4 Q. Roughly when did your conversations with  
5 Mary Blanche Hankey and the attorney general  
6 occur?

7 MR. GARDNER: Objection. Compound.

8 THE WITNESS: It was the day or two  
9 before the Labor Day weekend. The reason I  
10 remember that is that the attorney general is a  
11 college football fan, and he's a fan of the Auburn  
12 Tigers, so I ended the call with the cry for War  
13 Eagle, since the Auburn Tigers were playing their  
14 first game of the season that weekend.

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5 Q. Had the decision already been made as of  
6 the date of your conversation with Attorney  
7 General Sessions to request a citizenship question  
8 be included on the 2020 census questionnaire?

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22 Q. As of the date of your first conversation

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1 with Attorney General Sessions, did you already  
2 have a few that hard count CVAP data would better  
3 suit DOJ's needs with respect to VRA enforcement  
4 than ACS estimates?

5 A. No, I don't believe I did.

6 Q. When did you arrive at the view that  
7 hard count decennial census data with respect to  
8 citizenship would better suit DOJ's VRA  
9 enforcement needs as compared to ACS citizenship  
10 estimates?

11 A. I'm sorry. Your question was when?

12 Q. Yes.

13 A. Sometime before the letter was sent.

14 Q. Can you give a more specific time frame  
15 than that?

16 A. Probably not.

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Q. As of the date of your conversation with Attorney General Sessions, did you already have the view that the decennial census questionnaire would be the best vehicle for collecting CVAP data for purposes of VRA enforcement?

A. I don't recall having a view on that one way or the other as of that time.

Q. As of the date of Mr. Comstock's memo on September 8th, 2017, did you already have the view that the decennial census would be the best vehicle for collecting CVAP data for purposes of VRA enforcement?

A. I don't recall having a view on that issue one way or the other.

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Q. You mentioned you had a conversation with the attorney general around Labor Day. Did you understand from that conversation that the Secretary of Commerce initiated the conversation between the Secretary of Commerce and the attorney general? Correct?

A. That's been my working understanding.

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1 Yes.

2 Q. Your working understanding is not that  
3 the attorney general initiated a conversation with  
4 the Secretary of Commerce about the citizenship  
5 question, correct?

6 A. That's correct.

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Q. Who are the three individuals at the  
Department of Commerce --

A. Sure.

Q. -- that you spoke to about the  
citizenship question on the census?

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1           A.    I didn't mean to cut you off, and I  
2 apologize, again, to the court reporter for being  
3 a fast talker.

4                   I recall speaking to Peter Davidson,  
5 James Uthmeier, U-T-H-M-E-I-E-R -- and Wendy  
6 Teramoto.

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18           Q.    Who was the first of those three  
19 individuals that you had a conversation with about  
20 the inclusion of a citizenship question on the  
21 2020 census?

22           A.    Peter Davidson.

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1 Q. And roughly when was your first  
2 conversation with Peter Davidson about including a  
3 citizenship question on the 2020 census?

4 A. I don't recall exactly, but I would say  
5 it was probably around mid-September of 2017 or  
6 somewhere in that time frame.

7 Q. After you spoke to Mr. Davidson in  
8 mid-September, what was the next conversation that  
9 you had among those three individuals from  
10 Commerce about the citizenship question?

11 A. I don't recall exactly when it was. I  
12 had several conversations with Peter Davidson  
13 beginning in September and continuing through  
14 December. I had a couple of conversations as well  
15 with Mr. Uthmeier, including at least one between  
16 just Mr. Uthmeier and me and one, and maybe two,  
17 where Mr. Uthmeier and Peter Davidson were both  
18 involved. Then I had a conversation at one point  
19 with Wendy Teramoto about a scheduling issue that  
20 I think took place in October of 2017, but I don't  
21 recall exactly. Somewhere in that time frame.

22 Q. Roughly when was your first conversation

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1 with Mr. Uthmeier about the citizenship question?

2 A. I think it would have been either late  
3 September or sometime in October of 2017.

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17 Q. Mr. Gore, I just want to follow up  
18 on something from before the break. The  
19 communications between the Department of Justice  
20 and the Department of Commerce about the  
21 citizenship question, those communications were  
22 not initiated by the voting section, correct?

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1 A. That's correct. That's my understanding.

2 Q. And those communications were not  
3 initiated by anyone else in the civil rights  
4 division, correct?

5 A. Correct.

6 Q. And you did not initiate the  
7 communications between Commerce and Justice about  
8 the citizenship question, correct?

9 A. That's correct.

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14 Q. In front of you is a document that's been  
15 marked as Exhibit 7. It's an e-mail thread  
16 between, among other people, you, Macie Leach, and  
17 Wendy Teramoto. The first page of the document is  
18 Bates marked 0002628. It's from the  
19 administrative record.

20 MR. GARDNER: I think you may have said  
21 Exhibit 7. It's Exhibit 6.

22 MR. HO: Oh, I'm so sorry. Exhibit 6.

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Q. And that's two days after your exchange with Mr. Gary regarding 2020 census questions, correct?

A. Correct.

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Q. The DOJ-DOC issue that you're referring to in this e-mail is the citizenship question,

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1 correct?

2 A. Correct.

3 Q. What prompted you to reach out to  
4 Ms. Teramoto to talk to her about the citizenship  
5 question?

6 MR. GARDNER: Objection.

7 To the extent that that answer calls for  
8 the divulsion of information subject to  
9 deliberative process privilege, I instruct you not  
10 to answer. To the extent you can answer that  
11 question without divulging such information, you  
12 may do so.

13 THE WITNESS: It was a conversation I had  
14 with Peter Davidson.

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19 Q. And what is Mr. Davidson's role at  
20 Commerce?

21 A. I don't know what his current role is.  
22 At the time, I understood him to be the general

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1 counsel of the Department of Commerce.

2 Q. How did you come to talk to Mr. Davidson?

3 A. He called me.

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14 Q. And Mr. Davidson asked you to reach out

15 to Ms. Teramoto?

16 A. Yes, he did.

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2 Q. Okay. I'm going to show you an e-mail  
3 that's been marked as Exhibit 7. It's an e-mail  
4 exchange between, among other people, you and  
5 Ms. Teramoto. The first page of it bears the  
6 Bates number 0002657. The top e-mail on the chain  
7 is dated 9/16/2017 from Danielle Cutrona to you,  
8 Mr. Gore, with a cc to Ms. Teramoto. It's part of  
9 the administrative record.

10 This e-mail thread -- or the top e-mails  
11 on this thread, these are subsequent to the e-mail  
12 that we talked about earlier between you and  
13 Ms. Teramoto, correct?

14 A. Correct.

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19 Q. And you, after speaking with  
20 Ms. Teramoto, then introduced her to Danielle  
21 Cutrona from the Department of Justice, correct?

22 A. That's correct.

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1 Q. And Ms. Cutrona was a senior advisor to  
2 the attorney general at this time, correct?

3 A. That's probably a fair characterization,  
4 yeah.

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3 Q. You're not aware of any experience that  
4 Ms. Cutrona has with respect to enforcing  
5 Section 2 of the Voting Rights Act, correct?

6 A. That's correct.

7 Q. Did Ms. Teramoto and Ms. Cutrona connect  
8 after this e-mail exchange?

9 A. I believe that they did.

10 Q. How do you know that?

11 A. Because I believe that Danielle let me  
12 know that they had.

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Q. This is a continuation of the e-mail chain between you and Ms. Cutrona and Ms. Teramoto. The first page of it has the Bates number 0002653. It's part of the administrative record in this case. And the e-mail at the top is dated September 17th, 2017, from Ms. Cutrona to Ms. Teramoto.

The e-mail from Ms. Cutrona to Ms. Teramoto at the top reads, "Wendy, the attorney general is available on his cell. His number is" -- and then the number is redacted. "He is in Seattle, so he's three hours behind us. From what John told me, it sounds like we can do whatever you all need us to do and the delay was due to a miscommunication. The AG is eager to

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1 assist."

2 So you had a conversation with

3 Ms. Cutrona, correct?

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Q. Okay. I'm going to show you another document. We'll mark this as Exhibit 9.

(Gore Deposition Exhibit 9 marked for identification and attached to the transcript.)

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1 BY MR. HO:

2 Q. This is another e-mail from the  
3 administrative record, the first page of which --  
4 the only page of which has Bates number 0002636.  
5 The top e-mail is an e-mail to you dated  
6 September 18th, 2017. September 18th, 2017,  
7 that's two days after you connected Ms. Teramoto  
8 and Ms. Cutrona, correct?

9 A. That seems to be correct. Yes.

10 Q. And the e-mail to you states, "Hi. AG  
11 and Sec spoke. Please let me know when you have a  
12 minute."

13 What did you understand that to mean, AG  
14 and Sec spoke?

15 A. I understood it to mean what it says it  
16 means, that the attorney general and the Secretary  
17 spoke.

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Q. I'm not asking for the content of the conversation, just whether or not they spoke about the citizenship question. Is that your understanding?

A. Yes, that would be my understanding.

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Q. Let me show you another document. We'll  
mark this as Exhibit 10.

(Gore Deposition Exhibit 10 marked for  
identification and attached to the  
transcript.)

BY MR. HO:

Q. This is an e-mail to you dated  
September 22nd, 2017. Just so the record is  
clear, this was produced to us in discovery. The

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1 electronic version has a file name that's stamped  
2 DOJ 30651, but the document itself does not bear a  
3 Bates number.

4 Mr. Gosre, this is an e-mail to you from  
5 Camille Legore-Traore, correct?

6 A. Legore-Traore is I believe how she says  
7 it, but yes.

8 Q. And it's dated September 22nd, 2017?

9 A. Correct.

10 Q. And this e-mail informs you that James  
11 Uthmeier from the Department of Commerce called to  
12 speak with you, correct?

13 A. That's correct.

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Q. And at the time Mr. Uthmeier -- of this e-mail -- at the time of this e-mail, Mr. Uthmeier worked in the general counsel's office in the Commerce Department, correct?

A. That's correct.

Q. To the best of your knowledge, Mr. Uthmeier does not have any Voting Rights Act enforcement responsibilities, correct?

A. Correct.

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1 Q. And to the best of your knowledge,  
2 Mr. Uthmeier does not have any experience  
3 enforcing the Voting Rights Act, correct?

4 A. That is correct as well. Yeah.

5 Q. Did you ever return Mr. Uthmeier's call?

6 A. Yes. I believe I did.

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Q. Did you talk to him about the citizenship  
question?

A. Yes, among other things.

Q. At some point you received a note and a  
memo from Mr. Uthmeier concerning the citizenship  
question, correct?

A. That's correct.

Q. Was the note handwritten?

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1 A. Yes, it was.

2 Q. How was the note transmitted to you?

3 A. Along with the memo, it was delivered to  
4 my office.

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7 Q. Was it after receiving this phone call to  
8 your office from Mr. Uthmeier on September 22nd,  
9 2017?

10 A. I believe so, yes.

11 Q. Was it before the Department of Justice  
12 sent its letter to the Census Bureau on  
13 December 12th, 2017, requesting the citizenship  
14 question?

15 A. Yes.

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Q. Did the note solicit legal advice from  
you?

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1 A. No.

2 Q. And you didn't provide legal advice in  
3 response to that note, correct?

4 A. I believe I may have, actually.

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13 Q. Okay. So you think you did provide legal  
14 advice to Mr. Uthmeier in response to the memo?

15 A. Now you've changed the question.

16 Q. Yeah.

17 A. No, I didn't provide legal advice to  
18 Mr. Uthmeier.

19 Q. Did you provide legal advice to the  
20 Department of Commerce in response to the note  
21 from Mr. Uthmeier?

22 A. I did -- I did discuss -- now that you

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1 mention it, I did discuss the note with

2 Mr. Uthmeier and Mr. Davidson.

3 Q. Did you provide legal advice to the  
4 Department of Commerce in connection with the note  
5 from Mr. Uthmeier?

6 A. Yes.

7 Q. At this point were you anticipating  
8 litigation over the possibility of including a  
9 citizenship question in the census?

10 A. I'm sorry. Can you say that again?

11 Q. At this point --

12 A. Right.

13 Q. -- when you received the handwritten note  
14 from Mr. Uthmeier, were you anticipating  
15 litigation over the possibility of the inclusion  
16 of the citizenship question on the census?

17 A. Absolutely.

18 Q. Did the -- was the note shared with you  
19 in anticipation of litigation over the citizenship  
20 question?

21 MR. GARDNER: Objection. Lack of  
22 foundation. Calls for speculation.

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1 BY MR. HO:

2 Q. If you know.

3 A. That would be speculating. I don't know.

4 Q. Did the note state one way or the other  
5 whether or not it was prepared in anticipation of  
6 litigation?

7 A. I don't recall that it did.

8 Q. And did the note state one way or the  
9 other whether or not it was requesting legal  
10 advice from you?

11 A. Yes, it did.

12 Q. And your answer is it was requesting  
13 legal advice, the note?

14 A. Yes.

15 REDACTED

16 Did the Department of Justice rely on  
17 that note in drafting its request to the Census  
18 Bureau to include a citizenship question on the  
19 census?

20 MR. GARDNER: Objection. Vague.

21 THE WITNESS: The note contained  
22 information regarding that issue that was

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1 considered by the Department of Justice in  
2 drafting its request.

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2 Q. This is marked as Exhibit 11. This is an  
3 e-mail to you -- from you to Mr. Herren -- Chris  
4 Herren, sorry -- dated November 1st, 2017, with a  
5 cc to Ben Aguinaga, correct?

6 A. That is correct.

7 Q. Chris Herren is the chief of the voting  
8 section, correct?

9 A. Yes. And a great lawyer.

10 Q. The subject line of your e-mail is,  
11 Confidential and closehold draft letter, correct?

12 A. That's correct.

13 Q. And in your e-mail to Mr. Herren you say  
14 that the draft letter is attached, correct?

15 A. Correct.

16 Q. Did you write the draft letter that is  
17 attached to this e-mail?

18 A. Yes, I did.

19 Q. The draft letter that is attached to this  
20 e-mail is an early draft of the December 12th  
21 letter from the Department of Justice to the  
22 Census Bureau requesting a citizenship question on

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1 the 2020 census questionnaire, correct?

2 A. Correct.

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12 Q. Is it fair to say that you wrote the  
13 first draft of the letter from the Department of  
14 Justice to the Census Bureau requesting a  
15 citizenship question on the 2020 census  
16 questionnaire?

17 A. Yes.

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Q. Did you have any conversations with Mr. Herren about the citizenship question before you sent this letter to him?

A. Yes.

Q. How many conversations did you have with Mr. Herren before you sent the draft of the letter to him?

A. I don't recall exactly. It would have been a few.

Q. More than one?

A. Yes.

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What do you mean by confidential and  
closehold?

A. I meant that Mr. Herren should review the  
letter and this was not for broad dissemination,  
as it represented a draft. And I had asked him to

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1 take a look at it.

2 Q. When you say confidential and closehold,  
3 does that mean that Mr. Herren was not permitted  
4 to share the draft letter with anyone?

5 A. No. It meant that if he was interested  
6 in sharing the draft letter with someone, he could  
7 ask me if he was allowed to do that.

8 Q. So your understanding was that Mr. Herren  
9 should ask you before sharing any drafts of the  
10 letter with anyone?

11 A. I believe my understanding was that he  
12 should communicate with me if he wanted to share  
13 this particular draft with anyone.

14 Q. Did Mr. Herren ever communicate with you  
15 that he wanted to share the draft letter with  
16 anyone?

17 A. I can't recall.

18 Q. Do you know whether or not Mr. Herren  
19 shared this draft letter with anyone?

20 A. I don't.

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17 Q. Did you not want it to become public

18 information that the Department of Justice at this

19 point was drafting a letter to request a

20 citizenship question on the 2020 census

21 questionnaire?

22 MR. GARDNER: Objection to form.

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1 THE WITNESS: I never want any of our  
2 drafts to become public information unless  
3 required by legal process because I believe that  
4 the Department of Justice should facilitate robust  
5 and open conversation and deliberations at all  
6 level before a decision is made.

7 BY MR. HO:

8 Q. I didn't ask if you wanted the draft to  
9 not become public. I just asked if you wanted the  
10 fact that the Department of Justice was drafting a  
11 letter to request a citizenship question on the  
12 2020 census questionnaire, if you wanted that fact  
13 to remain non-public at this time.

14 A. I would have preferred that that fact  
15 remain non-public because the final letter hadn't  
16 been issued and no final decision had yet been  
17 made about it.

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Q. Did you authorize Mr. Aguinaga to send the draft letter that you had sent to Mr. -Herren to forward that to Bethany Pickett?

A. Yes.

Q. Now, at the time, Mr. Aguinaga and Ms. Pickett both worked with you in the front office of the civil rights division, correct?

A. That's correct.

Q. Both of them were political hires rather than career staff, correct?

A. Correct.

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Q. Both of them graduated from law school in 2015 or more recently, correct?

A. Sounds about right.

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Q. You're not aware of any experience that Mr. Aguinaga or Ms. Pickett had as counsel in Voting Rights Act cases prior to them coming to

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1 the civil rights division, correct?

2 A. That's correct.

3 Q. You're not aware of any experience that  
4 either Mr. Aguinaga or Ms. Pickett had assessing  
5 the reliability of CVAP data for purposes of VRA  
6 enforcement, correct?

7 A. That's correct.

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21 Q. Other than Ms. Pickett, Mr. Aguinaga, and

22 Mr. Herren, did you solicit input on the draft

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1 letter from anyone else within the civil rights  
2 division?

3 A. Not that I can recall.

4 Q. Other than Ms. Pickett, Mr. Aguinaga, and  
5 Mr. Herren, did you receive input on the draft  
6 letter from anyone else within the civil rights  
7 division?

8 A. Not that I can recall.

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12 (Gore Deposition Exhibit 14 marked for

13 identification and attached to the

14 transcript.)

15 BY MR. HO:

16 Q. I show you a document that's been marked

17 as Exhibit 14. It's an e-mail exchange between

18 you, Robert Troester, T-r-o-e-s-t-e-r, and

19 Rachael, spelled R-a-c-h-a-e-l, Tucker.

20 The top e-mail on the thread is

21 November 30th, 2017. This was produced to us in

22 discovery. The electronic version has DOJ 14798

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1 on it, although the hard copy doesn't have that  
2 Bates number.

3 It we look at the bottom of this page,  
4 the first e-mail on this thread is from you to  
5 Ms. Tucker and Mr. Troester on November 27th,  
6 2017, correct?

7 A. That's correct. Except that he  
8 pronounces his last name Troester.

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16 Q. Now, at this time, Ms. Tucker was counsel  
17 in the front office of the attorney general,  
18 correct?

19 A. That's correct.

20 Q. And Mr. Troester was associate deputy  
21 attorney general, correct?

22 A. That's my understanding, yes.

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1 Q. Okay. Now, neither Ms. Tucker nor  
2 Ms. [sic] Troester, as far as you're aware, had  
3 any experience as counsel in Voting Rights Act  
4 cases, correct?

5 A. Mr. Troester -- yes. That's correct.

6 Q. What about Ms. Tucker?

7 A. Also correct. You called him  
8 Ms. Troester, so -- sorry.

9 Q. Thank you.

10 A. But, yes, I was not aware that either had  
11 any enforcement responsibility or experience with  
12 respect to the Voting Rights Act.

13 Q. And as far as you're aware, neither of  
14 them had any experience assessing the reliability  
15 of CVAP data used in Voting Rights Act litigation,  
16 correct?

17 A. Correct.

18 Q. Ms. Tucker and Mr. Troester were both  
19 political appointees in the Department of Justice  
20 at this time, correct?

21 A. That's correct for Ms. Tucker. I believe  
22 Mr. Troester was a career employee on detail to

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1 the office of deputy attorney general and had  
2 served a long career in the Department of Justice  
3 as an assistant United States attorney, and maybe  
4 even more than once as the acting United States  
5 attorney in his home state of Oklahoma.

6 Q. In your e-mail to them on November 27th,  
7 you wrote, "Attached please find the near final  
8 draft of the letter to census on the citizenship  
9 issue we discussed a couple of weeks ago."

10 So you had discussed the citizenship  
11 issue with Ms. Tucker and Mr. Troester a few weeks  
12 before the date of this e-mail, November 27th,  
13 2017, correct?

14 A. Correct.

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At the time, Ms. Tucker was responsible

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1 for the civil rights division portfolio in the  
2 Office of Attorney General and Mr. Troester was  
3 responsible for the civil rights division  
4 portfolio in the Office of the Deputy Attorney  
5 General. So I had many conversations with them  
6 over time about issues related to the civil rights  
7 division.

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11 Q. So fair to say that on November 27th,  
12 2017, a decision had already been made to request  
13 a citizenship question on the census?

14 A. No, I don't think that's fair to say.

15 Q. Okay. Ms. Tucker and Mr. Troester both  
16 offered you edits to the letter, correct?

17 A. I believe that's correct.

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1 (Gore Deposition Exhibit 16 marked for  
2 identification and attached to the  
3 transcript.)

4 BY MR. HO:

5 Q. Exhibit 16 is what I'm handing to you  
6 now. Another e-mail chain between you and  
7 Mr. Gary. The top e-mail on the thread is dated  
8 December 8th, 2017. The subject line of this is,  
9 Request for citizenship information. December 8  
10 red-line edits, 002. Is that right?

11 A. Appears to be right, yeah.

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7 Q. Is there anyone that you can think of who  
8 was giving you edits in the last few days before  
9 this letter was sent from any of those offices  
10 other than Ms. Tucker and Mr. Troester?

11 A. Not that I can specifically recall.

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22 Q. You write, "With these changes, we are

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1 authorized to send. Sending on Monday is fine."

2 Did I read that correctly?

3 A. That's correct.

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21 Q. When you say, "With these changes we are  
22 authorized to send," on December 8th, 2017, when

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1 you wrote that, a decision had been made as of  
2 December 8th, 2017, to send the citizenship  
3 question -- the request for the citizenship  
4 question as long as it had these changes, correct?

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Q. So as soon as you made those changes to  
that letter, you had authorization to send that  
letter, correct?

A. I believe we might have had authorization  
to send, but it would have been my practice to  
check in one last time before the letter was sent.

Q. Okay. You didn't have reason to believe  
that you weren't authorized to send the letter  
once you had made those changes as of  
December 8th, 2017, right, Mr. Gore?

A. I don't recall what I thought or didn't  
think on December 8th of 2017.

Q. Okay. You didn't say in this e-mail to  
Mr. Gary that you were going to check in again

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1 after you made these changes, did you?

2 MR. GARDNER: Objection.

3 Mischaracterizes the document.

4 THE WITNESS: I did not use those words

5 in that e-mail.

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7 Q. You didn't tell Mr. Gary in this e-mail  
8 that, after these changes were made, you would  
9 have to check in with leadership one more time  
10 before sending it, right?

11 A. Again, I did not use those words in that  
12 e-mail, but that's standard practice, certainly my  
13 standard practice, and I believe the standard  
14 practice of others at the Department of Justice.

15 Q. You sent this e-mail on Friday,  
16 December 8th, which means Monday would have been  
17 Monday, December 11th, correct?

18 A. That's correct.

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Q. So just so I understand the process here, you had -- you first had communications about the issue of a citizenship question sometime around Labor Day of 2017, correct?

A. Give or take, yes, that's correct.

Q. You drafted the initial draft of the letter to request the citizenship question sometime around the end of October or early November of 2017, correct?

A. Correct.

Q. The conversations to add the citizenship question with the Department of Commerce were not initiated by the civil rights division, correct?

A. Correct.

Q. And they were not initiated by the Department of Justice, correct?

A. That's my working understanding.

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21 Q. Okay. Around November 1st of 2017, the

22 only career staff in the civil rights division

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1 from whom you received input on the letter was  
2 from Mr. Herren, correct?

3 A. That's correct.

4 REDACTED

5 of 2017 when you had drafted the initial draft of  
6 that letter, Mr. Herren gave you some edits,  
7 correct?

8 A. That's correct.

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12 Q. So you have no recollection of receiving  
13 input from career civil rights division staff on  
14 the letter requesting a citizenship question other  
15 than that one occasion in early November around  
16 the time of the first draft from Mr. Herren,  
17 correct?

18 A. I believe that's correct. Yeah.

19 Q. You continued to revise the letter after  
20 early November of 2017 with input from different  
21 people. But after that first round of edits from  
22 Mr. Herren, you received no subsequent edits from

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1 people who were career staff in the civil rights  
2 division, correct?

3 MR. GARDNER: Objection. Compound.

4 THE WITNESS: To the extent I understand  
5 your question, I believe that's correct.

6 BY MR. HO:

7 Q. During this period when you were revising  
8 the letter to request a citizenship question, you  
9 had multiple conversations with legal staff at the  
10 Department of Commerce, correct?

11 A. Yes.

12 Q. And the edits that you were receiving to  
13 the letter from other DOJ personnel included  
14 political appointees in the front office of the  
15 Department of Justice and in the front office of  
16 the civil rights division, correct?

17 A. I -- certainly that's correct with  
18 respect to the leadership offices at the  
19 Department of Justice. I can't remember if I was  
20 receiving edits from the front office of the civil  
21 rights division at that time after receiving the  
22 edits from Ms. Pickett.

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1 Q. Who made the final decision to send the  
2 letter requesting the citizenship question be  
3 added to the 2020 census questionnaire?

4 A. I'm not sure I know. And I can't recall  
5 who communicated the final decision to me.

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11 Q. Who gave the final signoff to put that  
12 letter in the mail?

13 MR. GARDNER: Objection. Asked and  
14 answered.

15 THE WITNESS: I don't recall who gave the  
16 final signoff.

17 BY MR. HO:

18 Q. Was it you?

19 A. No, I don't believe I would have given  
20 the final signoff. But maybe. I guess it depends  
21 on what you're asking. Like, who told Art Gary he  
22 could press "send" on the e-mail? I don't

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1 understand your question.

2 Q. Yes, that's my question.

3 A. I don't know.

4 Q. You don't know whether or not you did?

5 A. I don't recall whether it was me or

6 somebody else.

7 Q. All right.

8 A. It's possible it could have been me.

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13 Q. I'm going to show you what's been marked  
14 as Exhibit 17. This is a document in the  
15 administrative record, the first page of which has  
16 the number 000663. This is a letter stamped  
17 December 12th, 2017, from Arthur Gary at the  
18 Department of Justice addressed to Ron Jarmin at  
19 the Census Bureau, correct?

20 A. Yes. It appears to be.

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12 Q. And on either Monday, December 11th or  
13 Tuesday, December 12th, when you checked in with  
14 them, did either Ms. Tucker or Mr. Troester give  
15 you authorization to send the letter out?

16 MR. GARDNER: Objection. Compound.

17 THE WITNESS: I believe one of them must  
18 have, because the letter went out around that  
19 time.

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21 Q. So -- but your best memory is that you  
22 received final authorization to send the letter

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1 from either Ms. Tucker or Mr. Troester, correct?

2 A. Correct.

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18 Q. You said that you -- you testified that

19 you had spoken with either Ms. Tucker or

20 Mr. Troester on either Monday or Tuesday, December

21 11th or December 12th.

22 So it was when you had a conversation

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1 with them, with one of them, on either the 11th or  
2 the 12th, that you received final authorization  
3 for the letter to go out, correct?

4 A. I believe that's correct.

5 Q. So one of them, either Ms. Tucker or  
6 Mr. Troester, gave final authorization to send the  
7 letter, and it was either on December 11th or on  
8 December 12th, correct?

9 A. I would say that one of them communicated  
10 final authorization on one of those dates, and I  
11 imagine it was the 12th, since that's the date the  
12 letter went out.

13 Q. If one of them, as you say, communicated  
14 final authorization, where did that final  
15 authorization come from?

16 MR. GARDNER: Objection. Vague.

17 THE WITNESS: I believe it would have  
18 come from the attorney general.

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Q. So the first -- reading the first page doesn't refresh your recollection as to whether or not this is the letter?

A. It appears to be the letter.

Q. Okay. The letter signed by Mr. Gary represents the Department of Justice's final decision and statement of position with respect to the issue of the citizenship question on the census, correct?

A. Yes.

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1 Q. And this letter represents the views of  
2 the Department of Justice, connect?

3 A. Correct.

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19 BY MR. HO:

20 Q. Mr. Gore, can you look at what we marked  
21 earlier as Exhibit 12 -- I'm sorry, Exhibit 2. It  
22 was your testimony in Congress.

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1 A. Uh-huh.

2 Q. Please turn to page 23.

3 A. Sure.

4 Q. Sorry. I think I meant page 24. Oh, no,  
5 no. I'm sorry. I had it right. Page 23.

6 The fourth paragraph down here, there's a  
7 question from Member Lynch: "This is Attorney  
8 General Sessions you're talking about."

9 Your answer is, "It represents the view  
10 of the department, so I believe the attorney  
11 general agrees with that view. Yes."

12 That was your testimony in Congress,  
13 correct?

14 A. Yes.

15 Q. And you gave truthful testimony that day,  
16 correct?

17 A. I did.

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5 Q. Are there any -- just to be clear, there  
6 are no reasons that you're aware of that the  
7 Department of Justice wants a citizenship question  
8 on the 2020 census that are not reflected in this  
9 letter, correct?

10 A. That's correct. I'm aware of no such  
11 reasons.

12 Q. This letter is addressed to Dr. Ron  
13 Jarmin, correct?

14 A. Yes, it is.

15 Q. And Dr. Jarmin is the acting director of  
16 the Census Bureau, correct?

17 A. That's my understanding. Yes.

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17 Q. Who do you think knows more about the

18 accuracy of various forms of CVAP data, Dr. Jarmin

19 or you?

20 MR. GARDNER: Objection. Calls for

21 speculation. Lack of foundation.

22 THE WITNESS: I have no idea.

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Q. Do you think that you know more about the accuracy of various forms of CVAP data than the professionals at the Census Bureau?

MR. GARDNER: Objection. Calls for speculation. Lack of foundation.

THE WITNESS: Again, I don't know what the professionals at the Census Bureau know or don't know.

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Q. Do you have any background in statistics,  
Mr. Gore?

A. No.

Q. No graduate degree in survey -- I'm  
sorry, in anything quantitative?

A. No.

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1 Q. Any experience assessing the statistical  
2 validity of survey data?

3 A. No.

4 Q. You know that people in the Census Bureau  
5 do have a lot of experience assessing the  
6 statistical validity of survey data, right?

7 A. I imagine that there are people in the  
8 Census Bureau who have that expertise and  
9 experience. I don't know whether Dr. Jarmin or  
10 anyone else in particular does. And I couldn't  
11 identify anyone at the Census Bureau who has that  
12 expertise.

13 Q. But you would expect that there are  
14 people in the Census Bureau with expertise in  
15 assessing the validity of various forms of survey  
16 data, wouldn't you, Mr. Gore?

17 A. I would certainly hope so.

18 Q. And you don't have any such expertise,  
19 right?

20 A. That's correct.

21 Q. Okay. Prior to this letter, in the  
22 entire 53-year history of the Voting Rights Act,

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1 the Department of Justice had never requested a  
2 citizenship question on the decennial census  
3 questionnaire that's sent to every household in  
4 the United States, correct?

5 MR. GARDNER: Objection. Lack of  
6 foundation.

7 THE WITNESS: That is correct. To my  
8 knowledge.

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22 It's the position of the Department of

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1 Justice that the decennial census questionnaire is  
2 the most appropriate vehicle for collecting CVAP  
3 data for purposes of VRA enforcement, correct?

4 A. Yes. And -- I think the letter speaks  
5 for itself. But yes, that's the position.

6 Q. And the letter purports to establish why  
7 the decennial census questionnaire is the most  
8 appropriate vehicle for collecting CVAP data for  
9 purposes of VRA enforcement, correct?

10 A. Correct.

11 Q. You testified in Congress that your  
12 belief is that the decennial census questionnaire  
13 is the most appropriate vehicle for collecting  
14 CVAP data for purposes of VRA enforcement,  
15 correct?

16 A. I believe I did. Yes.

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To your understanding, is it accurate to say the from the 1970 through the 2000 censuses, the Census Bureau collected citizenship information through the census long form?

A. That's my understanding.

Q. And the long form was not sent to every household in the United States, correct?

A. That's my understanding.

Q. The long form was sent to a sample of households in the United States, correct?

A. That appears to be correct.

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3 Q. So you agree with me that, if you take a  
4 survey sample and you try to derive generalizable  
5 data from that survey sample, that that  
6 generalized data would be a statistical estimate,  
7 correct?

8 A. Sure.

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22 Q. My question was, you understand that

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1 citizenship data derived from the long form would  
2 be a statistical estimate, correct?

3 A. I believe that to be correct.

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14 Q. Okay. So for years, the Department of  
15 Justice relied on citizenship data collected  
16 through the census long form for purposes of VRA  
17 enforcement, correct?

18 A. That's my understanding. Yes.

19 Q. And after the long form was discontinued,  
20 the Department of Justice began relying on  
21 citizenship data collected through the ACS for  
22 purposes of VRA enforcement, correct?

**REDACTED**

1 A. Correct.

2 Q. And -- so it would be accurate to say  
3 that even when there was a citizenship question on  
4 the census long form, the Department of Justice,  
5 when it was using citizenship data for purposes of  
6 VRA enforcement, it was using data that were  
7 statistical estimates based on a sample, correct?

8 A. I believe that's correct, if I follow  
9 your question.

10 Q. So it's accurate to say that the  
11 Department of Justice, for as long as it's been  
12 enforcing the Voting Rights Act, when it's needed  
13 citizenship data, it has always relied on  
14 statistical estimates rather than hard count data,  
15 correct?

16 MR. GARDNER: Objection. Lack of  
17 foundation.

18 THE WITNESS: To the best of my  
19 knowledge, I think that's correct.

20 BY MR. HO:

21 Q. You're not aware of any period of time in  
22 which the Department of Justice had access to hard

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1 count citizenship data for purposes of VRA

2 enforcement, are you, Mr. Gore?

3 A. I'm not aware of that, no.

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8 Q. And you're aware that the Census Bureau

9 produces different estimates based on the ACS in

10 the form of one-year ACS estimates and five-year

11 ACS estimates, right, Mr. Gore?

12 A. That's correct. I think they have

13 three-year ACS estimates as well.

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21 Q. One-year ACS estimates are statistical

22 estimates based on a single year of ACS survey

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1 responses, correct?

2 A. That's my understanding.

3 Q. And five-year ACS estimates are  
4 statistical estimates that are based on ACS  
5 responses that are aggregated from a consecutive  
6 five-year period, correct?

7 A. It's my understanding. Yes.

8 Q. As of the date of the Gary letter, you  
9 understood the difference between one-year and  
10 five-year ACS estimates, right?

11 A. Yes.

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14 The Census Bureau intends that ACS  
15 one-year estimates be used for areas with a  
16 population larger than 65,000, right?

17 A. I think that's right.

18 REDACTED  
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1 (Gore Deposition Exhibit 18 marked for  
2 identification and attached to the  
3 transcript.)

4 BY MR. HO:

5 Q. It's a screenshot from the Census Bureau  
6 website entitled, American Community Survey (ACS):  
7 When to use one-year, three-year, or five-year  
8 estimates.

9 Do you see this table titled,  
10 Distinguishing features of ACS one-year, one-year  
11 supplemental, three-year, and five-year estimates,  
12 Mr. Gore?

13 A. I do, yes.

14 Q. And the far left-hand column has  
15 information about one-year estimates, correct?

16 A. Correct.

17 Q. And do you see in the third row of that  
18 table, second depending on whether you include the  
19 header, that the Census Bureau states that  
20 one-year estimates are data for areas with  
21 populations of 65,000-plus?

22 A. Yes, I see that.

REDACTED

1 Q. So that comports with your understanding,  
2 right, that one-year ACS estimates are intended  
3 for use only in areas with a population larger  
4 than 65,000, correct?

5 A. Yes, that's correct.

6 Q. And did you understand that one-year ACS  
7 estimates were intended for use in areas with a  
8 population over 65,000 as of the date of the Gary  
9 letter?

10 A. Yes.

11 Q. The far right-hand column of the table  
12 has information on five-year ACS estimates. Do  
13 you see that?

14 A. Yes, I do.

15 Q. And you see where the Census Bureau  
16 indicates that five-year ACS estimates have the  
17 largest sample size of different ACS estimates?

18 A. I do see that on this chart. Yes.

19 Q. You don't have any reason to doubt that,  
20 right?

21 A. No.

22 Q. Okay. And you see where on the chart it

REDACTED

1 states -- the Census Bureau states that five-year  
2 ACS estimates are data for all areas, correct?

3 A. Yeah, I do see that.

4 Q. As of the date of the Gary letter on  
5 December 12th, 2017, were you aware that the  
6 Census Bureau considers five-year ACS estimates to  
7 be usable data for all geographic areas regardless  
8 of population size?

9 A. Yes.

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15 In the sentence when the letter refers to  
16 "such purposes," that means for purposes of VRA  
17 enforcement, correct?

18 A. It refers to that and other purposes.

19 Q. Okay. What other purposes?

20 A. It also refers to use by state and local  
21 jurisdictions in drawing our redistricting plans.

22 Q. Redistricting plans for purposes of

# REDACTED

1 compliance with the Voting Rights Act, correct?

2 A. Yes, with the Voting Rights Act, and with  
3 other federal and state law requirements.

4 Q. Why would you need ACS citizenship data  
5 to draw districts to comply with other federal and  
6 state legal requirements other than Section 2 of  
7 the Voting Rights Act?

8 A. Section 2 would be predominant. I don't  
9 know every state law requirement that might be  
10 implicated by that. There might be state law  
11 requirements that require a reference to  
12 citizenship data. Currently, to my knowledge,  
13 every state in the union uses total population to  
14 achieve compliance with the equal protection  
15 clause's one-person/one-vote mandate. But I  
16 believe that in the past there have been  
17 jurisdictions that have used other measures. And  
18 whether a jurisdiction might choose to use that  
19 measure, I don't know -- measure of citizenship as  
20 opposed to something else.

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When the letter says that ACS data does not yield ideal data for such purposes, the predominant purpose that you're referring to there for which the ACS is not ideal is Section 2 compliance, correct?

A. I think the predominant purpose to which the letter is referring is Section 2 compliance. That's correct.

Q. Okay. After the letter has that statement, there are four bullet points, correct?

A. That is correct.

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Q. Okay. So tell me if I have this right.

The point that's being expressed in this bullet is that citizenship data from the ACS is not ideal for purposes of Section 2 compliance and enforcement because ACS citizenship data is a different data set that's separate and apart from the total population data derived from the decennial census; is that right?

A. I believe the point speaks for itself, and I think the way you've described it is more or less correct.

Q. Okay. Any ways in which the way I just

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1 described it strike you as incorrect?

2 A. Not as I sit here right now, no.

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Q. Now, how does the fact that the decennial enumeration data is in one data set, the PL data file, whereas the ACS citizenship data is in a different data set, the CVAP table -- how does the fact that they're in two different data sets render the ACS not ideal data for purposes of Section 2 enforcement?

A. Particularly for a map drawer, if -- a map drawer drawing a map in Maptitude or some other software needs to have both of these forms

601, 602, 802, Improper Expert Testimony under 702

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1 of information in order to draw districts that  
2 comply with the 14th Amendment and with Section 2.  
3 And map drawers currently have to go to two  
4 different data sets and try to match up those data  
5 sets in geography and specificity to the block  
6 level in order to perform that function.

7 If all of the data were available in the  
8 PL94-171 data set, they wouldn't have to do that.  
9 And experts engaged in redistricting litigation,  
10 including analyzing alleged violations of  
11 Section 2 and proposed remedial plans for proven  
12 violations of Section 2, could use a single  
13 data set to draw maps and otherwise to analyze  
14 Section 2 claims.

15 Q. If the Census Bureau could produce  
16 citizenship data as part of the PL data file  
17 without including a citizenship question on the  
18 census, would that resolve the concern that's  
19 expressed in this bullet point?

20 MR. GARDNER: Objection. Calls for a  
21 hypothetical.

22 THE WITNESS: Yeah, again, that's

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1 hypothetical. I don't know they can do that  
2 either as a matter of law or technical capacity.  
3 And I think -- so I don't know the answer to that  
4 question.

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7 Q. You don't know whether or not you'd be  
8 interested in a proposal from the Census Bureau to  
9 give you CVAP data as part of the PL data file  
10 without including a citizenship question on the  
11 census?

12 MR. GARDNER: Same objection.

13 THE WITNESS: Again, you're asking me a  
14 hypothetical without fleshing out all the facts  
15 and circumstances, so I can't tell you how anyone,  
16 the department or anyone else, would respond to  
17 that.

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Q. Okay. So you're not aware of any time where the Department of Justice, in enforcing the Voting Rights Act, had a single data set which had total population data and citizenship data in it, right, Mr. Gore?

A. I'm not aware one way or the other.

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# REDACTED

1 Q. But you're not saying that -- this letter  
2 is not saying that there was a prior point in time  
3 in which the Department of Justice had both total  
4 population and citizenship data in a single data  
5 set, correct?

6 A. I think the letter speaks for itself, and  
7 this particular bullet doesn't say that.

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Q. So the cases that DOJ has filed, you're not aware of any of those cases being unsuccessful because citizenship data and total population data were in two different data sets, correct?

A. That's correct. Again, we're not talking about cases that weren't filed. And, obviously, any case that was filed was a case that the Department of Justice believed it could win.

Q. Okay. You're not aware of any case filed by any plaintiff anywhere under the Voting Rights Act where the claim failed because of the fact that total population data and citizenship data

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1 were in two different data sets, correct?

2 A. Again, that's correct with respect to  
3 cases that were actually filed. And we're not  
4 talking about cases that weren't filed.

5 Q. You're not aware of a case -- and I'm not  
6 even going to talk about the Department of  
7 Justice -- where people have talked about filing a  
8 case publicly, but said, you know what, we're just  
9 not going to file this case because population  
10 data and citizenship data, they're in two  
11 different data sets, right?

12 MR. GARDNER: Objection to form.

13 THE WITNESS: I believe that's right, as  
14 I understand your question.

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6 Q. The point that's being expressed --  
7 correct me if I'm wrong -- in this bullet is that  
8 citizenship data from the ACS is not ideal for VRA  
9 enforcement purposes because ACS citizenship data  
10 purportedly does not align in time with the  
11 decennial census data, correct?

12 A. That's correct.

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18 Q. What does the department mean?

19 A. I believe what the department means is --  
20 it dovetails with the conversation we had just a  
21 moment ago about what the ACS data are.

22 So the ACS data are -- at least for the

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1 five-year estimates, are rolling. So they  
2 represent some estimate over five consecutive  
3 years. And the one-year estimate is a snapshot of  
4 one single year.

5 Now, the citizenship data from the  
6 decennial census is a recording of data at that  
7 point in time, and the ACS data doesn't always  
8 align with that particular point in time. So you  
9 may be measuring citizenship data from, if you're  
10 using a five-year estimate, four or five years  
11 before the census or four or five years after the  
12 census. And jurisdictions use the total  
13 population data in the census, and courts use that  
14 as well, throughout the entire decade.

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Q. Are you aware of a filed case by the Department of Justice under the Voting Rights Act where the department was unable to succeed on a VRA claim because of the fact that ACS citizenship data does not align in time with the decennial census data?

A. I am not aware of any such filed case.

Q. Okay. Are you aware of any case filed by any plaintiff anywhere where the court found that -- against the plaintiffs because the ACS data does not align in time with the decennial census?

A. I am not aware of any such filed case.

Q. Are you aware of any plaintiff ever declining to file a case because ACS data -- and I'm not talking about the department, not filed cases, because I understand that that's

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1 privileged.

2 But just based on your knowledge as  
3 someone who's knowledgeable about the Voting  
4 Rights Act, are you aware of any case where any  
5 plaintiff outside of DOJ did not bring a case  
6 under Section 2 of the Voting Rights Act because  
7 ACS data does not align in time with the decennial  
8 census?

9 A. I'm not aware of that, and certainly not  
10 aware of it from any public information.

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4 Okay. When the letter says, "margin of  
5 error," what do you understand that to mean?

6 A. Because the ACS estimates are estimates,  
7 and not a hard count, there's an associated margin  
8 in which -- that the Census Bureau assigns a  
9 value, usually a percentage, that the Census  
10 Bureau assigns to convey that, from a matter of  
11 statistics, it has confidence that the true result  
12 is somewhere within that range. And that's  
13 referred to as the margin of error.

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Q. And you'd agree with me that estimates with a smaller margin of error are more precise than an estimate with a bigger margin of error, right?

A. Yes.

Q. Now, the point that's being expressed in this bullet is that citizenship data from the ACS is not ideal for purposes of VRA enforcement because ACS citizenship data has a margin of error that increases as you get to smaller and smaller geographic units, correct?

A. That's correct.

Q. Okay. And the letter contrasts those ACS estimates with those margins of error with decennial census data, which are a full count of the population, right?

A. That's correct.

Q. You're aware that decennial census data

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1 that's published at the block level also has a  
2 margin of error associated with it; it's just not  
3 published by the Census Bureau, right?

4 A. I'm aware of that. Yes.

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12 Q. But as of the date of the Gary letter,  
13 you knew that even what is referred to in the Gary  
14 letter as full count data has margins of error  
15 associated with it, too, correct?

16 A. Yes.

17 Q. Okay. The Gary letter doesn't mention  
18 that full count data from the decennial census has  
19 margins of error, does it?

20 A. It doesn't appear to, no.

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Q. Okay. So let's try that again. The ACS data are described in this bullet as having a margin of error, correct?

A. That's correct.

Q. And the letter reads, "By contrast, decennial census data is a full count of the population," correct?

A. That's correct.

Q. And the bullet does not mention that

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1 decennial census data have margins of error  
2 associated with them, correct?

3 A. That's correct, as I've already  
4 testified.

5 Q. Okay. Now, when citizenship data was  
6 derived from the long form questionnaire, that was  
7 data that also had a margin of error associated  
8 with it, correct?

9 A. I would imagine that's correct.

10 Q. Okay. So you'd agree that, as far as you  
11 know, the Department of Justice, when it's relied  
12 on citizenship data, that citizenship data has  
13 always had a margin of error associated with it,  
14 correct?

15 A. That's my understanding.

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Q. And the letter doesn't mention the fact that citizenship data collected from the long form questionnaire and reported from the long form questionnaire were, like the ACS, also statistical estimates that had margins of error, correct?

A. I think that's correct with respect to reported from the long form questionnaire. I don't know if that's correct with respect to collected by the long form questionnaire because I don't know if the Census Bureau engaged in

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1 statistical estimates when it was actually  
2 collecting the responses to the long form  
3 questionnaire.

4 Q. Thank you.

5 The letter doesn't mention that the  
6 Department of Justice has always relied on  
7 statistical estimates of citizenship with margins  
8 of error for purposes of VRA enforcement, does it?

9 A. I believe that's correct. Again, the  
10 letter speaks for itself.

11 Q. Okay. You're not aware of a single filed  
12 case by the Department of Justice where the  
13 Department of Justice was unable to succeed on a  
14 VRA claim because of the fact that the CVAP data  
15 on which DOJ was relying was a statistical  
16 estimate with a margin of error that increases as  
17 the geographic area decreases, correct?

18 A. I am not aware of any such filed case.

19 Q. You're not aware of any case where a  
20 plaintiff was unable to succeed on a VRA claim  
21 because of the fact the five-year ACS citizenship  
22 data have a margin of error associated with them,

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1 correct?

2 A. Five-year estimates? That's correct.

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6 You're not aware of any case where  
7 plaintiffs declined to bring a VRA claim because  
8 ACS data are statistical estimates with a margin  
9 of error, correct?

10 A. That is correct. I am aware of one case  
11 in which a court held that the one-year ACS  
12 estimate, because of its associated margin of  
13 error, was insufficiently reliable to allow the  
14 plaintiff in that case to proceed with a Section 2  
15 claim.

16 Q. Right. That's the Benavidez case, right?

17 A. That is correct.

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THE WITNESS: The position of the Department of Justice is that we want to have the most complete, accurate, reliable data we can possibly have.

We have the ACS data. We have been bringing cases using the ACS data. We believe that having a hard count citizenship data from the census questionnaire would give us another

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1 data point that we could use to identify  
2 jurisdictions for potential Section 2  
3 investigations and enforcement.

4 I don't believe it's disputed by anybody  
5 that a litigant, any plaintiff, the Department of  
6 Justice or a private plaintiff, needs block-level  
7 data in order to bring Section 2 redistricting  
8 claims -- now, whether that's derived from the ACS  
9 or from some other source -- because when  
10 jurisdictions draw districts to achieve equal  
11 population, they use block-level data.

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Q. Right. So let's take this block of five

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people. Right? If the block group that this was

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1 in, the ACS reported 60 percent of the people in  
2 that block group are citizens, what you would do  
3 right now is you take that 60 percent number and  
4 then you apply it to the individual blocks. So  
5 you would look at this group of five and you'd  
6 say, well, our estimate is three of those five  
7 people are citizens, correct?

8 MR. GARDNER: Objection. Form.  
9 Objection. Hypothetical.

10 THE WITNESS: That would be one way to  
11 estimate census block citizenship data from an ACS  
12 estimate at the block group level.

13 BY MR. HO:

14 Q. And what the Department of Justice is  
15 saying is that we have these estimates, but we'd  
16 also like a hard count, because if we had the  
17 decennial census questionnaire out there and had  
18 the citizenship question posed, we would know with  
19 a hard count instead of an estimate -- instead of  
20 only an estimate -- how many of those five people  
21 are, in fact, citizens, correct?

22 MR. GARDNER: Objection. Form.

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1 THE WITNESS: That's more or less  
2 correct. I believe we want to have the best, most  
3 accurate and most complete data we can possibly  
4 have.

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17 Q. Okay. Your expectation is that when you  
18 requested a citizenship question on the census  
19 questionnaire, that the Census Bureau was going to  
20 include it, collect that information, and give it  
21 to the Department of Justice on a block-by-block  
22 level, correct?

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A. Yes.

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Q. Okay. What's your understanding of what the Census Bureau is going to give you for this census block of one person in terms of CVAP data when the citizenship question is included on the census?

MR. GARDNER: Objection. Calls for a hypothetical.

THE WITNESS: I have no understanding of

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1 what the Census Bureau is going to do or what data  
2 it's going to provide us in the future related to  
3 this request.

4 BY MR. HO:

5 Q. You don't know one way or the other, is  
6 what you're saying, whether or not, when the  
7 Census Bureau gives you block-by-block CVAP data  
8 derived from responses to the census  
9 questionnaire, whether or not, with respect to a  
10 block that has one person on it, that that  
11 individual block-level CVAP data is going to  
12 reflect that person's response to the citizenship  
13 question on the census, correct?

14 MR. GARDNER: Objection. Form.  
15 Objection. Hypothetical.

16 THE WITNESS: Again, that's hypothetical.  
17 What I'm telling you is I don't know how the  
18 Census Bureau planned to report the data that  
19 we've requested.

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You want block-by-block data from the

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Census Bureau. That's what you've requested,

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correct?

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A. That is correct.

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It's that when the Census Bureau gives you block-by-block citizenship data, as you've requested, based on responses to the citizenship questionnaire, right now, you don't know, if you're looking at a block with one person on it, whether or not that citizenship data that you get from the Census Bureau is going to reflect the response to the citizenship questionnaire, correct?

MR. GARDNER: Same objections.

THE WITNESS: Of course I don't know that, because I don't know what the data is going to be. And I don't know whether the person who completes the census questionnaire is going to complete it fully or something else. I have no idea.

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3 A. You're asking about something that might  
4 happen in the future. That's a hypothetical. I  
5 don't know.

6 Q. Well, this is the data that the  
7 Department of Justice has requested. You've  
8 requested that the Census Bureau go block by  
9 block and ask --

10 A. That's correct.

11 Q. -- people block by block, every member of  
12 every household, how many people are citizens and  
13 not, correct?

14 A. That is correct.

15 Q. And you expect that the CVAP table that  
16 you get from the Census Bureau on a block-by-block  
17 basis is going to reflect answers to those  
18 citizenship questions, correct?

19 A. That would be my expectation. Yes.

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Q. Well, Mr. Gore, it's not hypothetical.

You understand that there are census blocks with one human on them, correct?

A. I do understand that. Yes.

Q. Okay. If the Census Bureau is going to give you CVAP data for that block and tell you whether or not that person is a citizen, you don't know, sitting here today, whether or not that -- that data that the Census Bureau is going to give you is going to reflect that person's answer to the citizenship question on the census, correct?

A. I don't know what that data is going to reflect because, again, you're asking me about a hypothetical.

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Q. Sure. Is it your understanding that, when the Census Bureau reports CVAP data block by block after the 2020 census, that, with respect to blocks that have only one person on it, that the CVAP data reported by the Census Bureau will reflect the answer that that person gave to the citizenship question on the census questionnaire?

MR. GARDNER: Objection. Form.

THE WITNESS: My understanding is that

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1 that would certainly be possible, just like it  
2 would reflect information about that person's race  
3 that they would have provided on the census  
4 questionnaire.

5 BY MR. HO:

6 Q. Now, you're aware that the Census Bureau  
7 intends to use techniques such as synthetic data  
8 noise infusion to avoid the disclosure of people's  
9 responses to the census questionnaire?

10 MR. GARDNER: Objection. Lack of  
11 foundation.

12 THE WITNESS: I'm aware that there are  
13 some techniques. I don't know that particular  
14 technique. I'm not familiar with it.

15 BY MR. HO:

16 Q. So you've never heard the term "synthetic  
17 data noise infusion" before?

18 A. I believe I may have heard it. I just  
19 don't understand it.

20 Q. You're not aware that synthetic noise  
21 infusion is a practice whereby the Census Bureau  
22 intends to replace some sensitive information

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1 about a census respondent with different  
2 information based on sample data from a  
3 statistical model when it publishes the data?

4 A. I generally have that understanding. I  
5 cannot perform that particular data manipulation  
6 myself.

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16 Q. Sure. You're aware that, because of  
17 disclosure avoidance procedures like synthetic  
18 noise infusion, which we talked about a second  
19 ago, that even with the citizenship question on  
20 the 2020 census questionnaire, the CVAP data  
21 produced by the Census Bureau at the block level  
22 will have error margins associated with it,

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1 correct?

2 A. I'm not aware of that because I don't  
3 understand the causal relationship between those  
4 masking techniques and any margin of error.  
5 Moreover, I don't know what techniques the Census  
6 Bureau plans to use or how it plans to deploy  
7 those with respect to responses to the  
8 2020 census.

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1 Q. But you're aware, are you not, that the  
2 Census Bureau today does not know whether or not  
3 the margins of error associated with the CVAP data  
4 that it produces based on responses to the census  
5 questionnaire will have margins of error that are  
6 larger or smaller than the CVAP data currently  
7 used by the Department of Justice?

8 MR. GARDNER: Objection.

9 BY MR. HO:

10 Q. Right?

11 MR. GARDNER: Objection. Lack of  
12 foundation.

13 THE WITNESS: I am not aware of the  
14 Census Bureau's view on that issue.

15 BY MR. HO:

16 Q. Okay. So you didn't try to determine,  
17 before requesting a citizenship question on the  
18 census questionnaire, whether or not CVAP data  
19 derived from that citizenship question would, in  
20 fact, have smaller margins of error than the CVAP  
21 data currently relied on by the Department of  
22 Justice, correct?

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1           A.   Are you asking about me, personally?   You  
2   used the word "you" in your question.   I just want  
3   to understand who you're asking --

4           Q.   The Department of Justice.

5           A.   Ah.   I'm not aware of what the Department  
6   of Justice may or may not have done.

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Q. You're not aware of any such communications between the Department of Justice and the Census Bureau about whether or not, due to disclosure avoidance techniques, the CVAP data produced from responses to the decennial census questionnaire, would, in fact, have smaller margins of error than the CVAP data currently relied on by the Department of Justice, correct?

A. I don't believe I'm aware of any such communication.

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Q. The Gary letter doesn't mention the fact that CVAP data derived from the decennial census would have margins of error due to disclosure avoidance techniques that might even be larger than the margins of error currently associated with ACS CVAP data relied on by the Department of Justice at present, correct?

A. Again, I don't -- I'm not sure I'm following all the chains of that hypothetical, and

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5 Q. So here's my question with respect to  
6 this bullet. If the Census Bureau could produce  
7 to you full count CVAP data that didn't have  
8 sampling margins of error like the ACS CVAP data  
9 but -- and could do so without including a  
10 citizenship question on the census, that would  
11 resolve the concerns expressed in this bullet,  
12 correct?

13 MR. GARDNER: Objection. Calls for  
14 hypothetical.

15 THE WITNESS: That's hypothetical. I  
16 can't answer that.

17 BY MR. HO:

18 Q. You don't know one way or the other?

19 MR. GARDNER: Objection. Calls for  
20 hypothetical.

21 THE WITNESS: It's a hypothetical. I  
22 can't answer a hypothetical.

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20 Q. Do you remember how we talked about how,

21 when data has smaller margins of error, we'd --

22 you and I agree that that data would be more

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1 precise than data that has larger margins of  
2 error, right?

3 A. Yes.

4 Q. Today, do you believe that CVAP data  
5 produced from responses to a question about  
6 citizenship on the census questionnaire will be  
7 more precise than the data that the Department of  
8 Justice is currently relying on with respect to  
9 CVAP for purposes of VRA enforcement purposes?

10 A. I'm not sure I have a view on that one  
11 way or the other, since I don't know what the  
12 margin of error is that the Census Bureau will  
13 assign to census responses and, particularly, the  
14 citizenship question should it be asked on the  
15 2020 census.

16 Q. So just to clarify, right now you don't  
17 know whether or not CVAP data produced from  
18 responses to the citizenship question on the  
19 census questionnaire will, in fact, be more  
20 precise than the CVAP data on which DOJ is  
21 currently relying for purposes of VRA enforcement?

22 A. I believe that's correct. I don't know

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1 what the margin of error is that will be assigned  
2 to that, to that data.

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22 Q. Okay. Correct me if I'm wrong, but the

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1 point that's being expressed in this bullet is  
2 that citizenship data from the ACS is not ideal  
3 for purposes of VRA enforcement because ACS  
4 citizenship data is published at the block group  
5 level and DOJ is required to perform further  
6 estimates to generate CVAP data at the census  
7 block level, correct?

8 A. Correct.

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14 Q. You're not aware of any time previously  
15 where DOJ has had at its disposal CVAP data broken  
16 down by race and ethnicity at the census block  
17 level, correct?

18 A. I am not aware of that.

19 Q. You're not aware of any time previously  
20 where DOJ did not have to use an estimated -- an  
21 estimation procedure in order to convert CVAP data  
22 from the Census Bureau from one geographical level

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1 into block level data broken down by race or  
2 ethnicity, correct?

3 A. As I understand your question, that's  
4 correct.

5 Q. The Gary letter doesn't mention the fact  
6 that, for purposes of VRA enforcement, DOJ has  
7 always had to use an estimated -- an estimation  
8 procedure in order to convert CVAP data from the  
9 Census Bureau at one geographic level into CVAP  
10 data by race and ethnicity at the block level,  
11 correct?

12 A. I've just testified that I don't know  
13 whether that's a fact or not. But there's no  
14 mention of that issue in the Gary letter.

15 Q. You've never assessed the statistical  
16 reliability of estimation techniques for deriving  
17 block level CVAP data from block group level CVAP  
18 data, correct?

19 MR. GARDNER: Objection. Form.

20 THE WITNESS: I don't believe I have, no.

21 BY MR. HO:

22 Q. You're not aware of any case that was

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1 filed by DOJ where DOJ was unable to succeed on a  
2 VRA claim because of the fact that DOJ performed  
3 an estimation procedure to derive census block  
4 level CVAP data correct?

5 A. I'm not aware of any such filed case.

6 Q. You're not aware of any case where any  
7 plaintiff was unable to succeed on a VRA claim  
8 because of the fact that the plaintiff had to  
9 perform an estimation procedure to derive  
10 block-level CVAP data, correct?

11 A. I'm not aware of any such filed case, and  
12 I understand your question to be limited to filed  
13 cases.

14 Q. You're not aware of any situation where a  
15 plaintiff did not bring a case because of the fact  
16 that the plaintiff would have to perform an  
17 estimation procedure in order to generate CVAP  
18 data at the census block level, correct?

19 MR. GARDNER: Objection to the extent  
20 that you're calling for information subject to the  
21 law enforcement privilege. To the extent you are  
22 asking for that information, I would instruct the

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1 witness not to answer.

2 To the extent you can answer that  
3 question without divulging law  
4 enforcement-sensitive information, you may do so.

5 THE WITNESS: I am not aware of any  
6 public, nonprivileged information to indicate the  
7 existence of any such case.

8 BY MR. HO:

9 Q. If the Census Bureau could produce CVAP  
10 data at the block level for the Department of  
11 Justice instead of at a different level of  
12 geography, and could do so without including a  
13 citizenship question on the census, would that  
14 alleviate the concern that's expressed in this  
15 bullet point?

16 MR. GARDNER: Objection. Calls for a  
17 hypothetical.

18 THE WITNESS: It's a hypothetical I can't  
19 engage in.

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2 Q. You're just refusing to answer the  
3 question, correct?

4 A. I'm telling you my answer is I won't  
5 engage in a hypothetical.

6 Q. Okay. Aside from the four bullets  
7 expressed in this letter, are there any other  
8 reasons why ACS CVAP data are not the ideal data  
9 for purposes of VRA enforcement of which you are  
10 aware?

11 A. Not that I'm aware of.

12 Q. Okay. I'm going to show you a document.  
13 We'll mark this as 20.

14 (Gore Deposition Exhibit 20 marked for  
15 identification and attached to the  
16 transcript.)

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14 Q. You're not aware of any of these cases  
15 failing because of the quality of CVAP data  
16 available to the Department of Justice, correct?

17 MR. GARDNER: Objection. Lack of  
18 foundation.

19 THE WITNESS: I am not aware.

20 BY MR. HO:

21 Q. You mentioned earlier a case, the  
22 Benavidez case. Do you remember that?

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1 A. Yes.

2 Q. It's a case from the Northern District of  
3 Texas, right?

4 A. Yes.

5 Q. It's not a circuit court case, right?

6 A. That is correct.

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1 Q. No, I appreciate that.

2 So just so that the record is clear, the  
3 Benavidez case is the only case that you're aware  
4 of where the plaintiff's claim failed in part due  
5 to reliance on ACS CVAP data, correct?

6 A. Correct.

7 Q. And just to be clear, the Benavidez case  
8 was not brought by the Department of Justice,  
9 correct?

10 A. Correct.

11 Q. Now, your understanding is that the  
12 plaintiffs in the Benavidez case relied on  
13 one-year ACS estimates, correct?

14 A. That's my recollection from the case.  
15 Yes.

16 Q. And your recollection is that the  
17 plaintiffs in the Benavidez litigation did not  
18 rely on five-year ACS estimates, correct?

19 A. That is my recollection. Correct.

20 Q. And your recollection is that, in the  
21 Benavidez case, the court found that the one-year  
22 ACS data that the plaintiffs were relying upon was

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1 not sufficiently reliable for the geographic areas  
2 at issue in that case, correct?

3 A. Correct.

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14 Q. And the plaintiffs in the Benavidez case  
15 didn't rely on those five-year ACS estimates,  
16 correct?

17 A. That's correct.

18 Q. And you --

19 A. That's my recollection.

20 Q. And you're not aware of a single case in  
21 which a plaintiff's VRA claim failed due to  
22 reliance on five-year ACS estimates, correct?

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1 A. Correct. I'm not aware of any such case.

2 Q. You described the Benavidez case in your  
3 testimony to Congress, correct?

4 A. I believe I mentioned it. Yes.

5 Q. At the time you testified in Congress,  
6 you were aware that the plaintiffs in the  
7 Benavidez case relied on one-year rather than  
8 five-year ACS data, correct?

9 A. I believe that's correct.

10 Q. Okay. In your testimony in Congress, you  
11 didn't mention the fact that although the Census  
12 Bureau considers one-year ACS estimates to be  
13 reliable only for areas that are -- have 65,000  
14 people or more, it considers five-year ACS  
15 estimates to be reliable for any geographic area,  
16 correct?

17 A. I don't recollect the specifics of my  
18 testimony on that point.

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Q. That wasn't my question. My question was, you don't recall mentioning the five-year ACS estimates during your testimony in Congress, correct?

A. I don't recall mentioning it or not mentioning it.

Q. In fact, you didn't mention the five-year ACS estimates during your testimony, correct?

A. I answered that question. I don't recall whether I did or I didn't.

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1 Q. Can you think of any reason why you  
2 wouldn't mention the fact that the -- that there  
3 are five-year ACS estimates during your  
4 congressional testimony?

5 A. I was not asked -- I don't believe I was  
6 asked the intervals of estimates that are  
7 available through the ACS. I was responding to a  
8 different question, as I recall my testimony. But  
9 if you point me to where my testimony is in the  
10 transcript, I'd be happy to discuss it further.

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Q. Going back to the list of cases that's in front of you --

A. Exhibit 20?

Q. Yes.

A. Okay.

Q. None of these cases have been filed since you were acting assistant attorney general for civil rights, correct?

I meant just the Section 2 cases on the first page, sorry.

A. That is correct.

Q. In fact, none of the Section 2 cases

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1 listed on the first page have been filed since the  
2 start of the Trump administration, correct?

3 A. That is correct.

4 Q. Okay. The previous administration -- for  
5 part of its time, the previous administration, in  
6 addition to having responsibilities under  
7 Section 2 of the Voting Rights Act, also had  
8 obligations under Section 5 of the Voting Rights  
9 Act, correct?

10 A. That's correct.

11 Q. The current administration does not have  
12 obligations under Section 5 of the Voting Rights  
13 Act to the same extent, correct?

14 MR. GARDNER: Objection to form.

15 THE WITNESS: That's correct.

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17 Q. What obligations, if any, does the  
18 current administration have with respect to  
19 Section 5 enforcement?

20 A. That is a fair question. There are a  
21 couple of jurisdictions that are covered under  
22 Section 3(c) of the Voting Rights Act, which is

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1 similar to Section 5. We may, in fact, have no  
2 obligations with respect to Section 5 at this  
3 point due to the Supreme Court's decision in  
4 Shelby County, which was a 2013 decision, so it  
5 was about in the middle of the prior  
6 administration's tenure.

7 Q. Okay. If you look at the previous  
8 administration, 2009 through the beginning of  
9 2017, it looks like the Department of Justice  
10 filed five Section 2 cases during that period.

11 A. I believe that's correct.

12 Q. Okay. So previous administration had  
13 Section 5 obligations to review voting changes in  
14 all or part of 16 states for part of that time,  
15 correct?

16 A. I believe until the Shelby County  
17 decision in 2013.

18 Q. Okay. And the current administration  
19 doesn't have those obligations and hasn't filed  
20 any Section 2 cases?

21 A. That's correct. We also haven't had a  
22 decennial census which has required every state in

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1 the union to redistrict during the time of this  
2 administration, which the prior administration did  
3 in the 2010 census.

4 Q. You would say that it is not unusual for  
5 the Department of Justice to go several years  
6 without filing a Section 2 case, right?

7 A. While I review this list, I think  
8 that's -- that may or may not be correct. But  
9 there have certainly been years and multiyear  
10 periods where the Department of Justice has not  
11 filed Section 2 cases.

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12 MR. HO: We'll mark this as Exhibit 21.

13 (Gore Deposition Exhibit 21 marked for  
14 identification and attached to the  
15 transcript.)

16 BY MR. HO:

17 Q. It's an e-mail exchange between you,  
18 Arthur Gary, and others. The top e-mail on the  
19 thread is from you to Arthur Gary dated  
20 January 29th, 2018. The first page bears Bates  
21 number DOJ 00002712.

22 I want to go through the individual

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1 e-mails on here. Okay?

2 So the top e-mail, this is Arthur Gary  
3 e-mailing you, correct?

4 A. I don't believe so, actually.

5 Q. Oh, I'm sorry. The top is you e-mailing  
6 Arthur Gary, correct?

7 A. Appears to be, yes.

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14 Q. Okay. I want to look at the first e-mail  
15 in time on this chain. It's on the last page,  
16 page 5, Bates number DOJ 2716.

17 This is an e-mail from Ron Jarmin to  
18 Arthur Gary, cc'ing Enrique Lamas of the Census  
19 Bureau. And it has the date December 22nd, 2017,  
20 right?

21 A. Yes, that's correct.

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16 Q. Okay. So just to clarify, your

17 understanding is that, in this e-mail, the acting

18 director of the Census Bureau is expressing -- is

19 stating that Census Bureau staff have briefed him

20 and sug -- and -- on their findings which suggest

21 that the best way to provide block-level CVAP data

22 is not to add a citizenship question to the

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1 decennial census questionnaire, correct?

2 A. I think that's right. This e-mail speaks  
3 for itself, and obviously I didn't write it and it  
4 wasn't addressed to me.

5 Q. Your understanding is that the Census  
6 Bureau director is -- or acting Census Bureau  
7 director is stating that Census Bureau staff have  
8 conducted an analysis and briefed him on their  
9 findings which suggest that the best way to  
10 provide block-level CVAP data for DOJ's needs is  
11 through a linked file of administrative and survey  
12 data that the Census Bureau already possesses,  
13 correct?

14 A. That's my understanding of what this  
15 says. Yeah.

16 Q. And your understanding is that the Census  
17 Bureau director is -- acting Census Bureau  
18 director is writing and stating that his staff --  
19 that Census Bureau staff have analyzed this issue  
20 and briefed him on their findings that the linked  
21 file of administrative and survey data would  
22 result in higher quality data produced at lower

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1 cost than including a citizenship question on the  
2 census questionnaire, correct?

3 A. I understand that he is communicating  
4 that the findings of the staff suggest that. Yes.

5 Q. Okay. No meeting between the technical  
6 experts at DOJ and the Census Bureau took place  
7 between the date of the December 12th Gary letter  
8 requesting a citizenship question and the Ross  
9 decision memo in March of 2018 directing the  
10 inclusion of a citizenship question, correct?

11 A. I am not aware of any such meeting.

12 Q. You're not aware of any such meeting of  
13 technical staff in the civil rights division,  
14 which you are the head of, and the Census Bureau's  
15 technical staff to discuss this proposal -- or  
16 these findings, rather, about a different way of  
17 generating block-level CVAP data referenced in  
18 this e-mail, correct?

19 A. I am not aware of any such meeting.

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Q. Okay. On page 3, page DOJ 2714, on January 2nd, Arthur Gary writes to Ron Jarmin, "It should work fine. Let me get back to you. Best wishes to you for 2018 as well."

I read that correctly, right?

A. Yes, you did.

Q. That's in response to a meeting -- an e-mail on the following page which is from Ron Jarmin to Arthur Gary which reads, "Arthur, happy new year. Would the late next week work for a meeting?" Right?

A. Appears -- that appears correct.

Q. Okay. So at this point, it looked like Mr. Gary was planning on having a meeting or suggested that a meeting the following week with the Census Bureau would work fine, correct?

A. Again, these e-mails speak for

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1 themselves. And I can't speak for Mr. Gary. But  
2 that seems about right.

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2 Q. Mr. Gary writes back to Ron Jarmin and  
3 offers a number of options for a meeting,  
4 including Friday, January 19th, at 11:00 a.m.,  
5 right?

6 A. That appears to be correct.

7 Q. And in the next e-mail on the thread,  
8 Dr. Jarmin writes to Arthur Gary on January 10th,  
9 "Thanks, Gary. Let's do Friday at 11:00. We're  
10 fine meeting at main Justice." Right?

11 A. Right.

12 Q. The next e-mail, which is on the first  
13 page at the bottom, on January 16th, 2018, Arthur  
14 Gary writes to cancel the meeting with Ron Jarmin,  
15 correct?

16 A. Well, it looks like -- he says  
17 they're unable -- "We" -- I don't know who "we"  
18 are -- "will be able to meet on Friday or this  
19 week."

20 Q. Did you have any conversations with  
21 Mr. Gary about meeting with the Census Bureau  
22 between the date of Dr. Jarmin's e-mail on

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1 December 22nd requesting a meeting between Census  
2 Bureau and DOJ staff and Arthur Gary's e-mail on  
3 January 16th stating, due to some scheduling  
4 conflicts, we will be unable to meet on Friday?

5 A. Yes.

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8 Q. What was the content of that  
9 conversation?

10 A. I believe the content of that  
11 conversation related to this request that the  
12 Census Bureau and the Department of Justice hold a  
13 meeting.

14 Q. And what did Mr. Gary convey to you about  
15 the Census Bureau's request to have a meeting  
16 between DOJ and Census Bureau technical staff?

17 A. He conveyed to me that the request had  
18 been made.

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Q. And what was your response to receiving that information?

A. I listened to what Mr. Gary had to say and told him that I would think about the issue and discuss it further with others.

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Q. What, if anything, did you do with the information that the Census Bureau had an alternative means for providing DOJ with block-level CVAP data?

A. I discussed that with various people at the Department of Justice.

Q. And who did you discuss that with?

A. I discussed it with Rachael Tucker, Pat Hovakimian. I may have discussed it with Danielle Cutrona. I'm not sure. And I eventually discussed it with the attorney general.

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Q. You mentioned that you discussed it with the attorney general. When did you discuss the fact that the Census Bureau had an alternative means of producing block-level CVAP data with the attorney general?

A. It would have been at some point after I spoke to Art Gary. I don't remember the exact date.

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Q. You didn't ask Arthur Gary to get more information about the specifics of the proposal from the Census Bureau to get higher quality CVAP data at lower cost?

A. I don't recall asking him that and I don't recall him conveying that to me that that was a representation that the Census Bureau had made.

Q. Okay. You at some point had a conversation with the Attorney General about this. Was that in person or by phone?

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1 A. In person.

2 Q. And it was in January of 2018?

3 A. Probably. Yeah.

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20 Q. That's fine.

21 The decision was made not to pursue the

22 Census Bureau's alternative proposal for producing

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1 block-level CVAP data for purposes of VRA  
2 enforcement through a means other than including a  
3 citizenship question on the census, correct?

4 A. That is correct.

5 Q. Who made that decision?

6 A. The attorney general.

7 Q. When was that decision made?

8 A. Around this time. I don't know exactly  
9 when it was made. I can't remember the specific  
10 date.

11 Q. When you say "around this time," you mean  
12 around January of 2018, correct?

13 A. That is correct.

14 Q. Are the reasons for that decision  
15 memorialized anywhere?

16 A. Not to my knowledge.

17 Q. Were those reasons ever communicated to  
18 you?

19 A. Yes.

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17 Q. Who informed Art Gary of the decision not  
18 to meet with the Census Bureau to discuss their  
19 alternative proposal for producing block-level  
20 CVAP data?

21 A. I did.

22 Q. When did you inform Mr. Gary of that

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1 decision?

2 A. It would have been around this  
3 January 29th date, I believe. But I don't recall  
4 specifically.

5 Q. And who informed you that the Department  
6 of Justice should not meet with the Census Bureau  
7 to discuss the Census Bureau's alternative  
8 proposal for producing block-level CVAP data?

9 A. The attorney general.

10 Q. You received this e-mail thread from  
11 Arthur Gary, which includes the initial e-mail  
12 from Dr. Jarmin describing the alternative  
13 proposal for collecting CVAP data at higher  
14 quality produced at lower cost on January 29th,  
15 2018, correct?

16 A. On this e-mail chain, that's correct. I  
17 don't know whether I received it before then or  
18 not. But yes, this e-mail -- the e-mail dated  
19 January 29th, 2018, at 2:33 p.m., is the first  
20 e-mail in this chain where Mr. Gary sent me that  
21 information.

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Q. Do you have any reason to think that

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Secretary Ross knows more about the accuracy of

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various forms of CVAP data than the career

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professionals at the Census Bureau?

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MR. GARDNER: Objection. Lack of

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foundation.

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THE WITNESS: I have no basis to answer

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that question.

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16 Just here today, you know that Dr. Jarmin  
17 wrote to Arthur Gary and said Census Bureau staff  
18 have looked at this issue, and their analysis  
19 suggests that there's a way to get CVAP data for  
20 DOJ that would produce higher quality data at  
21 lower cost, and wanted to meet with DOJ about  
22 that. You understand that, right?

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1           A.    Yes, I believe I've testified that I  
2 understand that.

3           Q.    Okay.   And when you told Congress that  
4 the best vehicle -- or the most appropriate  
5 vehicle for obtaining CVAP data was through the  
6 decennial census questionnaire, you didn't mention  
7 Dr. Jarmin's proposal, right?

8           MR. GARDNER:   Objection.   Asked and  
9 answered.

10          THE WITNESS:   Again, I don't remember  
11 exactly everything that I testified to on May  
12 21st.   I'm happy to read that testimony now and  
13 answer your question and verify -- or give you the  
14 verification or confirmation that you seem to be  
15 asking me for.

16          But no, I didn't mention this.   I didn't  
17 mention everything about the decision or the issue  
18 in that testimony to Congress.   I was asked  
19 specific questions by congresspeople and gave  
20 answers to the best of my ability and recollection  
21 within the constraints that the Department of  
22 Justice places on witnesses who testify before

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1 Congress.

2 Moreover, all it says here is that there  
3 were some career staff who made findings that  
4 suggested a particular thing, not that they had  
5 firmly reached that conclusion. And of course, as  
6 I mentioned before, it's up to Secretary Ross to  
7 make that determination as a matter of law, or at  
8 least that's my understanding.

9 BY MR. HO:

10 Q. I mean, this isn't an e-mail from just a  
11 random Census Bureau staffer. This is an e-mail  
12 from the acting director of the Census Bureau,  
13 correct?

14 MR. GARDNER: Objection. Argumentative.

15 THE WITNESS: I understand that  
16 Dr. Jarmin was the acting director of the Census  
17 Bureau, yes.

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1 Q. Okay. Are you satisfied that your  
2 testimony to Congress, which omitted Dr. Jarmin's  
3 proposal to meet with the DOJ to discuss the  
4 Census Bureau's findings that there was a way to  
5 produce higher quality data at lower cost aside  
6 from the census [sic] question -- are you  
7 satisfied that that was complete testimony to  
8 Congress?

9 A. Absolutely. I -- I testified completely  
10 and honestly to Congress on the matters that I was  
11 in a position to testify on.

12 Q. Your goal is to get the most complete and  
13 accurate CVAP data from the Census Bureau, right?

14 A. That would be the Department of Justice's  
15 goal. Yes.

16 Q. And despite having that goal, you did  
17 not -- and when I say "you," the Department of  
18 Justice did not have a meeting of its technical  
19 staff with the Census Bureau to discuss the Census  
20 Bureau's proposal to get higher quality CVAP data  
21 at lower cost, correct?

22 MR. GARDNER: Objection. Asked and

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1 answered.

2 THE WITNESS: I believe that's correct.

3 BY MR. HO:

4 Q. Are you aware of any other circumstance  
5 where the Department of Justice asked the Census  
6 Bureau to collect data but then refused to have a  
7 technical meeting to discuss that data request?

8 A. I'm not aware of that, nor am I aware of  
9 any instance where the Census Bureau has offered  
10 that kind of meeting.

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16 Q. This is marked as Exhibit 22. It's an  
17 e-mail from Ron Jarmin to Census Bureau personnel  
18 in the administrative record with Bates number  
19 9074.

20 In this e-mail, Dr. Jarmin is forwarding  
21 to Census Bureau personnel an e-mail that he had  
22 previously written on February 6th, 2018, to

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1 Enrique Lamas and, it appears, Karen Dunn Kelley.

2 Do you see that?

3 A. I do see that.

4 Q. Dr. Jarmin writes to Ms. Kelley, "Karen,

5 I spoke with Jarmin is Gary. He has spoken with

6 DOJ leadership. They believe the letter

7 requesting citizenship be added to the 2020 census

8 fully describes their request. They do not want

9 to meet. Thanks, Ron."

10 Did I read that right?

11 A. Yes, you did.

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Q. Dr. Jarmin was correct that DOJ leadership did not want to have a technical meeting to discuss DOJ's request for block-level CVAP data, correct?

A. I believe that's correct.

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Q. Mr. Gore, as the head of the civil rights division, you want the civil rights division to have access to the most accurate CVAP data for purposes of VRA enforcement, right?

A. Right.

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3 Q. Well, before Secretary Ross' decision  
4 memo -- that decision memo was in March of 2018,  
5 correct?

6 A. Sounds right.

7 Q. Okay. So before Secretary Ross' memo,  
8 you didn't know what the Census Bureau's views  
9 were about the most accurate form of CVAP data,  
10 correct?

11 A. That's probably correct. Yeah.

12 Q. Okay. So before March of 2018, as  
13 someone who wants the Department of Justice to  
14 have the most accurate CVAP data for VRA  
15 enforcement, you wanted to be able to have a  
16 meeting of DOJ technical staff with the Census  
17 Bureau to learn about the Census Bureau's views  
18 about the most accurate CVAP data, correct?

19 MR. GARDNER: Objection. Hypothetical.

20 THE WITNESS: That's a hypothetical.

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20 Q. Okay. So it's correct that you received

21 a draft of Commerce's decision memo before the

22 final memo became public, correct?

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A. That appears to be correct. Yes.

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8 Q. Okay. So is it correct, as this comment  
9 notes, that the December 12 letter requesting a  
10 citizenship question be added to the census did  
11 not say that it was necessary to collect CVAP data  
12 through the census questionnaire for VRA  
13 enforcement?

14 A. That is correct.

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21 Q. And you -- my question was, you,  
22 yourself, have specifically noted that the

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1 December 12 letter, the Gary letter, did not use  
2 the word "necessary" with respect to the inclusion  
3 of a citizenship question on the 2020 census,  
4 correct?

5 A. Yes, I have just noted that in my  
6 testimony. I will say I don't know -- I have no  
7 recollection of what this comment is referring to.

8 Q. You agree, right, Mr. Gore, that CVAP  
9 data collected through the census questionnaire is  
10 not necessary for DOJ's VRA enforcement efforts?

11 A. I do agree with that. Yes.

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The chief scientist of the Census Bureau, I'm representing to you, has given deposition testimony in this litigation stating that the analysis conducted by the Census Bureau indicates that the best quantitative evidence that's available to the Census Bureau at present suggests to the Census Bureau and leads the Census Bureau to conclude that the inclusion of a citizenship question is likely to reduce self-response rates to the census questionnaire.

Do you understand the representation that I've just made to you?

A. I do. I can't verify whether it's accurate, since I'm not familiar with that deposition testimony.

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Q. Are there any planned meetings between the civil rights division and the Census Bureau about the effect that the citizenship question on the 2020 census is going to have on the accuracy of census data?

A. I'm not aware of any such meetings, nor do I know whether any such meetings would be productive at this point, since the 2020 census hasn't yet been conducted and nobody knows what the effect of the citizenship question on that particular census will be.

Q. Mr. Gore, are you aware of any other circumstance in which the Department of Commerce has reached out to the Department of Justice to see if the Department of Justice would request data from the Census Bureau?

A. I'm not aware of any other such instance,

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10 Q. Mr. Gore, just to circle back on  
11 something we talked about earlier, when Attorney  
12 General Sessions made the decision for there not  
13 to be a meeting between DOJ technical staff and  
14 the Census Bureau, at that time, Secretary Ross  
15 had not yet issued his decision memo directing the  
16 inclusion of a citizenship question on the census,  
17 correct?

18 A. That is correct.

19 Q. So it's accurate to say, since that  
20 decision memo had not yet been issued, that that  
21 decision memo did not play any role in the  
22 decision that was made not to have a meeting

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1 between Census Bureau and technical staff,  
2 correct?

3 A. That is -- I believe that's correct.

4 Yes.

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Q. Okay. And if you look at Exhibit 34,  
it's a document titled, Census citizenship  
question.

This is the briefing paper that was  
attached to that e-mail, correct?

A. I can't verify that for sure, but --

Q. Does it appear to be?

A. It appears to be -- yes, it appears to be  
a briefing paper on that topic.

Q. Okay. And the subject is, AG prep for  
CJS Approps. hearing, correct?

A. That is correct.

Q. Okay. So this citizenship -- census  
citizenship question briefing paper, Exhibit 34,  
it's for the attorney general, correct?

A. That is correct.

Q. Okay. Exhibit 34, at the top, the first  
bullet under the section background reads, "Not

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1 public. In 2017, Secretary of Commerce Wilbur  
2 Ross requested that the Justice Department send a  
3 letter requesting the addition of a citizenship  
4 question on the 2020 census."

5 Is that statement accurate, as far as you  
6 know?

7 MR. GARDNER: Objection. Lack of  
8 foundation.

9 THE WITNESS: As far as I know, yes.

10 BY MR. HO:

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16 Q. And it's correct that, as of the date of  
17 this e-mail, April 6th, 2018, the fact that  
18 Secretary of Commerce Ross requested that the  
19 Justice Department send a letter requesting the  
20 addition of a citizenship question was not public,  
21 correct?

22 MR. GARDNER: Objection. Lack of

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1 foundation.

2 THE WITNESS: I believe that was -- I  
3 believe that's correct. I don't remember for  
4 sure.

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Q. Why, if you know, was it not public by April 6th, 2018, that Secretary Ross had requested that the Justice Department send a letter requesting the addition of a citizenship question?

MR. GARDNER: Objection. Lack of foundation. Calls for speculation.

THE WITNESS: I don't know.

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2 Q. Okay. But just so I'm clear on it, you  
3 have had discussions with Attorney  
4 General Sessions on the topic of whether  
5 apportionment or redistricting should be conducted  
6 using total population or some other measure?

7 MR. GARDNER: Objection to the extent it  
8 mischaracterizes the witness' previous testimony.

9 THE WITNESS: I stand by my prior answer  
10 that I had a conversation with the attorney  
11 general about the question of the use of total  
12 population or some other measure for apportionment  
13 purposes.

14 BY MS. HULETT:

15 Q. And you can't disclose that conversation  
16 because it was during the pre-deliberative process  
17 leading to the decision as to whether to request  
18 that the Census Bureau include a citizenship  
19 question on the decennial census?

20 A. That is correct.

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1 Q. Well, to start with, I'm talking about  
2 Reyes versus City of Farmers Branch, Barnett  
3 versus City of Chicago, Negrón versus City of  
4 Miami Beach, Romero versus City of Pomona, and  
5 LULAC versus Perry.

6 A. I read all of those cases before this  
7 letter was sent. And I may have read the LULAC  
8 versus Perry decision more recently than that.

9 Q. And before you list these cases, the  
10 sentence right before the cases in the second  
11 paragraph says, "Multiple federal courts of appeal  
12 have held that, where citizenship rates are at  
13 issue in a vote dilution case, citizen voting age  
14 population is the proper metric for determining  
15 whether a racial group could constitute a majority  
16 in a single-member district."

17 Did I read that correctly?

18 A. Yes, you did.

19 Q. These are all appellate court or Supreme  
20 Court cases. Did you read any of the lower court  
21 opinions in these cases?

22 A. I believe I did. Yes.

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1 Q. And do any of these appellate court  
2 opinions that are cited in this paragraph hold  
3 that long-form data or ACS survey data is  
4 deficient or unsuitable for use in a Section 2  
5 analysis?

6 MR. GARDNER: Objection. Compound.

7 THE WITNESS: I don't believe so.

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Q. Have you ever communicated with anyone at the White House about the citizenship question?

A. Yes.

Q. Who?

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1 A. I communicated with John Zadrozny.

2 Q. And who is he?

3 A. Z-a-d-r-o-z-n-y, I believe, is how he  
4 spells his last name. And at the time, he was  
5 working, I believe, for the Domestic Policy  
6 Council.

7 Q. And when did you communicate with him?

8 A. I believe it was sometime in October of  
9 2017.

10 Q. Who initiated the contact?

11 A. I don't recall. What I recall about it  
12 is that I participated in a conference call on the  
13 issue on which Mr. Zadrozny -- in which  
14 Mr. Zadrozny also participated.

15 Q. Conference call on the issue of adding  
16 the citizenship question?

17 A. That's correct.

18 Q. In October of 2017?

19 A. I believe it was October of 2017.

20 Q. Who else was on that conference call?

21 A. I can recall that other people from the  
22 Department of Justice were on the call. Rachael

REDACTED

1 Tucker, who we've discussed previously, and Gene  
2 Hamilton I believe was on the call. And there may  
3 have been others, but I can't remember  
4 specifically who they were.

5 Q. Other than the addition of the  
6 citizenship question to the census, was that the  
7 only topic --

8 A. Yes.

9 Q. -- discussed in the call?

10 A. Yes, it was.

11 Q. And were there people from the Department  
12 of Commerce on that call?

13 A. No, there were not. Or at least not to  
14 my knowledge.

15 Q. So to your knowledge, it was one White  
16 House official, and the rest of you were all from  
17 the Department of Justice?

18 A. To the best of my knowledge and  
19 recollection, yes.

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Q. And did you know before the call why you were invited?

A. Yes.

Q. And why were you invited?

A. Because I was involved in this issue on behalf of the Department of Justice.

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13 Q. You don't see anything in the letter,  
14 correct, that references any aspect of how this  
15 data is relevant to Section 2 enforcement other  
16 than with respect to Gingles 1, correct?

17 A. I don't see anything like that. That's  
18 correct.

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Has any map drawer, outside of somebody employed by the federal government, ever communicated to you that it would be better if the citizenship data were in the same data set as the total population data?

MR. GARDNER: Could you re-ask that question again? I'm sorry. I missed the first clause.

MR. GREENBAUM: Can you read it back?  
(The reporter read the record as requested.)

THE WITNESS: I don't know who you mean by "you." If you mean the Department of Justice, I can't answer that question because I don't know what conversations have happened between map drawers outside of the federal government and members of the Department of Justice.

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1 BY MR. GREENBAUM:

2 Q. I mean you, John Gore.

3 A. Me, personally? I don't believe I've  
4 ever had any such conversation that I can recall.

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Q. Prior to December 12th, 2017, did you  
have any communication with anybody who was not a  
federal employee at the time about having a

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1 citizenship question on the census?

2 A. Yes.

3 Q. Who?

4 A. I had a conversation with a gentleman  
5 named Mark Neuman, who I believe was not a federal  
6 employee at the time.

7 Q. Who is Mark Neuman?

8 A. I understand Mark Neuman to be a former  
9 employee of the Census Bureau or the Department of  
10 Commerce -- I'm not sure which one. And I  
11 understood that he was advising the Department of  
12 Commerce and the Census Bureau with respect to  
13 this issue.

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14 Q. And if the Census Bureau were providing  
15 census data at the block level, isn't it true  
16 that, for those census blocks that have one  
17 person, that that person's answer to the census  
18 question regarding citizenship would be revealed  
19 in the data itself?

20 MR. GARDNER: Objection. Calls for a  
21 hypothetical.

22 THE WITNESS: Again, I believe I had this

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1 discussion with Mr. Ho earlier. I don't know the  
2 answer to that question. It's a hypothetical  
3 question.

4 Mr. Ho also talked about data masking  
5 techniques that the Census Bureau might use. I  
6 don't know how those would implicate the answer to  
7 the question. I don't know how the Census Bureau  
8 is planning to report the results of this data or  
9 this question from the questionnaire to the  
10 Department of Justice.

11 There's a lot I don't know, so I can't  
12 take a view on that and I, unfortunately, can't  
13 answer your question.

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Q. You may have answered this earlier, but I'm going to ask it again. Who decided that the Department of Justice would request that the Census Bureau add a citizenship question to the census?

A. I believe I've answered that earlier, and it was the attorney general.

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17 Q. And do you recall sharing any subsequent  
18 drafts of what became the December 12th letter  
19 with Mr. Herren?

20 A. I don't recall one way or the other.

21 Q. Do you recall him giving you comments on  
22 any subsequent drafts?

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A. I don't recall one way or the other.

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CERTIFICATE OF NOTARY PUBLIC

I, CHRISTINA S. HOTSKO, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHRISTINA S. HOTSKO

Notary Public in and for the  
District of Columbia

My commission expires:

November 14, 2021

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1 NEW YORK IMMIGRATION COALITION, et al., vs.  
2 UNITED STATES DEPARTMENT OF COMMERCE, et al.  
3 JOHN GORE  
4

5 INSTRUCTIONS TO THE WITNESS

6 Please read your deposition over carefully and  
7 make any necessary corrections. You should state the  
8 reason in the appropriate space on the errata sheet  
9 for any corrections that are made.

10 After doing so, please sign the errata sheet and  
11 date it. You are signing same subject to the changes  
12 you have noted on the errata sheet, which will be  
13 attached to your deposition.

14 It is imperative that you return the original  
15 errata sheet to the deposing attorney within  
16 thirty (30) days of receipt of the deposition  
17 transcript by you. If you fail to do so, the  
18 deposition transcript may be deemed to be accurate  
19 and may be used in court.  
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1 NEW YORK IMMIGRATION COALITION, et al., vs.  
2 UNITED STATES DEPARTMENT OF COMMERCE, et al.

3 JOHN GORE

4 E R R A T A

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6 PAGE LINE CHANGE

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8 Reason: \_\_\_\_\_

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10 Reason: \_\_\_\_\_

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12 Reason: \_\_\_\_\_

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14 Reason: \_\_\_\_\_

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PA 3072371

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1 NEW YORK IMMIGRATION COALITION, et al., vs.

2 UNITED STATES DEPARTMENT OF COMMERCE, et al.

3 JOHN GORE

4  
5 ACKNOWLEDGMENT OF DEPONENT

6 I, \_\_\_\_\_, do hereby certify  
7 that I have read the foregoing pages and that the  
8 same is a correct transcription of the answers given  
9 by me to the questions therein propounded, except for  
10 the corrections or changes in form or substance, if  
11 any, noted in the attached Errata Sheet.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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